106th Congress
1st Session

COMMITTEE PRINT

Volume 2

(106–6)

COMPILATION OF RAILROAD LAWS RELATING TO RAILROAD RETIREMENT, UNEMPLOYMENT, AND LABOR

INCLUDING

RAILROAD RETIREMENT ACT OF 1974
RAILROAD UNEMPLOYMENT INSURANCE ACT
RAILWAY LABOR ACT
FEDERAL EMPLOYERS' LIABILITY ACT
LABOR DISPUTE RESOLUTIONS

PREPARED FOR THE USE OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

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INTRODUCTORY NOTE

The Committee on Transportation and Infrastructure is pleased to publish two volumes compiling railroad-related laws within the jurisdiction of the Subcommittee on Ground Transportation. The Subcommittee was created at the beginning of the 106th Congress through the merger of the former Subcommittees on Surface Transportation and Railroads. With minor exceptions, the new Subcommittee's jurisdiction includes that of both of the former Subcommittees.

This volume includes the laws relating to railroad labor relations, railroad retirement, and railroad unemployment. The companion volume encompasses the laws regulating railroad safety and economic regulation, as well as the statutes governing the railroad-related portions of the Department of Transportation and rail passenger service.

BUD SHUSTER,
Chairman, Committee on
Transportation and Infrastructure

Railroad Retirement Act of 1974

Railroad Unemployment Insurance Act

Railway Labor Act

Federal Employers' Liability Act

Labor Dispute Resolutions

To use this index, bend the publication over and locate the desired section by following the black markers.

RAILROAD RETIREMENT ACT OF 1974

RAILROAD RETIREMENT ACT OF 1974

(as amended through January 1999)

AN ACT To amend an Act entitled "An Act to establish a retirement system for employees of carriers subject to the Interstate Commerce Act, and for other purposes," approved August 29, 1935.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. For the purposes of this Act—

(a)(1) The term "employer" shall include—

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

(iii) any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in paragraph (i) or (ii) of this subdivision;

(iv) any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and any other association, bureau, agency, or organization which is controlled and maintained wholly or principally by two or more employers as defined in paragraph (i), (ii), or (iii) of this subdivision and which is engaged in the performance of services in connection with or incidental to railroad transportion; and

(v) any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and its State and National legislative committees, general committees, insurance departments, and local lodges and divisions, established pursuant to the constitution or bylaws of such organization.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the term "employer" shall not include—

(i) any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities; and

(ii) any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general diesel-railroad system of transportation, but shall not exclude any part of the general diesel-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this paragraph.

(b)(1) The term "employee" means (i) any individual in the service of one or more employers for compensation, (ii) any individual who is in the employment relation to one or more employers, and (iii) an employee representative: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to an employer as defined in paragraph (i) of subsection (a)(1) on or after August 29, 1935.

(2) The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a) who before or after August 29, 1935, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d)(1) An individual is in the service of an employer whether his service is rendered within or without the United States if—

(i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and

(ii) he renders such service for compensation, or a method of computing the monthly compensation for such service is provided in section 3(j).

(2) Notwithstanding the provisions of subdivision (1) of this subsection—

(i) an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting

the principal part of its business in the United States only when he is rendering service to it in the United States;

(ii) an individual shall be deemed to be in the service of a local lodge or division of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) all, or substantially all, the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or (B) the headquarters of such local lodge or division is located in the United States; and

(iii) an individual shall be deemed to be in the service of a general committee of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) he is representing a local lodge or division described in clause (A) or (B) of paragraph (ii); or (B) all, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or (C) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof. For purposes of this subdivision, the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e)(1) An individual shall be deemed to have been in the employment relation to an employer on August 29, 1935, if—

(i) he was on that date on leave of absence from his employment, expressly granted to him by the employer by whom he was employed, or by a duly authorized representative of such employer, and the grant of such leave of absence will

have been established to the satisfaction of the Board before July 1947;

(ii) he was in the service of an employer after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive;

(iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last employer by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such employer and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason an employer by whom he was employed before August 29, 1935, or an employer who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in paragraph (ii); or

(iv) he was on August 29, 1935, absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the employer, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his senority [1] rights.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, an individual shall not be deemed to have been in the employment relation to an employer on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last payroll period before August 29, 1935, in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

(f)(1) The term "years of service" shall mean the number of years an individual as an employee shall have rendered service to one or more employers for compensation or received remuneration for time lost and shall be computed in accordance with the provisions of section 3(i). Twelve calendar months consecutive or otherwise in each of which an employee has rendered such service or received such wages for time lost shall constitute a year of service. Ultimate fractions shall be taken at their actual value.

(2) Where service prior to August 29, 1935, may be included in the computation of years of service as provided in subdivision (3) of section 3(i) it may be included as to—

(i) service rendered to a person which was an employer on August 29, 1935, irrespective of whether such person was an employer at the time such service was rendered.

[1] So in original. Probably should be "seniority".

(ii) service rendered to any express company, sleeping-car company or carrier by railroad which was a predecessor of a company which on August 29, 1935, was an employer as defined in paragraph (i) of subsection (a)(1) irrespective of whether such predecessor was an employer at the time such service was rendered; and

(iii) service rendered to a person not an employer in the performance of operations involving the use of standard railroad equipment if such operations were performed by an employer on August 29, 1935.

(g)(1) For purposes of section 3(i)(2) of this Act, an individual shall be deemed to have been in "military service" when commissioned or enrolled in the active service of the land or naval forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States, while serving in the land or naval forces of the United States for any period, even though less than thirty days, shall be deemed to have been active service in such force during such period.

(2) For purposes of section 3(i)(2) of this Act, a "war service period" shall mean (A) any war period, or (B) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by call of the President, or by any Act of Congress or regulation, order, or proclamation pursuant thereto, to enter and continue in military service, or (C) any period after September 7, 1939, with respect to which a state of national emergency was duly declared to exist which requires a strengthening of the national defense. For purposes of section 3(i)(2) of this Act, the period beginning on June 15, 1948, and ending on December 15, 1950, shall be deemed to be a war service period with respect to any individual who without intervening employment not covered by this Act rendered service as an employee to an employer under this Act in the year such individual was released from active military service or in the year immediately following such year.

(3) For purposes of section 3(i)(2) of this Act, a "war period" shall be deemed to have begun on whichever of the following dates is the earliest: (A) the date on which the Congress of the United States declared war; or (B) the date as of which the Congress of the United States declared that a state of war has existed; or (C) the date on which war was declared by one or more foreign states against the United States; or (D) the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states; or (E) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government.

(4) For purposes of section 3(i)(2) of this Act, a "war period" shall be deemed to have ended on the date on which hostilities ceased.

(h)(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers, or as an employee representative,

including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or if the employee establishes, subject to the provisions of section 9, the period during which such compensation will have earned.

(2) An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of determining amounts to be included in the compensation of an employee, the term "compensation" shall also include cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(4) Tips included as compensation by reason of the provisions of subdivision (3) shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954 or, if no statement including such tips is so furnished, at the time received. Tips so deemed to be paid in any month shall be deemed paid for services rendered in such month.

(5) In determining compensation, there shall be attributable as compensation paid to an employee in calendar months in which he is in military service creditable under section 3(i)(2), in addition to any other compensation paid to him with respect to such months—

(i) for each such calendar month prior to 1968, $160;

(ii) for each such calendar month after 1967 and prior to 1975, $260; and

(iii) for each such calendar month after 1974, the amount which is creditable as such individual's "wages" under section 209(d) of the Social Security Act.

(6) Notwithstanding the provisions of the preceding subdivisions of this subsection, the term "compensation" shall not include—

(i) tips, except as is provided under subdivision (3) of this subsection;

(ii) remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(iii) remuneration earned in the service of a local lodge or division of a railway-labor-organization employer with respect to any calendar month in which the amount of such remuneration is less than $25;

(iv) remuneration for service as a delegate to a national or international convention of a railway-labor-organization employer if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service";

(v) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability; and

(vi) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expense incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

(7) The term "compensation" includes any separation allowance or subsistence allowance paid under any benefit schedule provided under section 701 of title VII of the Regional Rail Reorganization Act of 1973 and any termination allowance paid under section 702 of that Act, but does not include any other benefits payable under that title. The total amount of any subsistence allowance paid under a benefit schedule provided pursuant to section 701 of the Regional Rail Reorganization Act of 1973 shall be considered as having been earned in the month in which the employee first timely filed a claim for such an allowance.

(8) Notwithstanding any other provision of this Act, for the purposes of sections 3(a)(1), 4(a)(1), and 4(f)(1), the term "compensation" includes any payment from any source to an employee or employee representative if such payment is subject to tax under section 3201 or 3211 of the Internal Revenue Code of 1954.

(i) The term "Board" means the Railroad Retirement Board.

(j) The term "company" includes corporations, associations, and joint-stock companies.

(k) The term "employee" includes an officer of an employer.

(l) The term "person" means an individual, a partnership, an association, a joint-stock company, a corporation, or the United States or any other governmental body.

(m) The term "United States," when used in a geographical sense, means the States and the District of Columbia.

(n) The term "Social Security Act" means the Social Security Act as amended from time to time.

(o) An individual shall be deemed to have a "current connection with the railroad industry" at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under this Act begins to accrue to him or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, the Surface Transportation Board, the National Mediation Board, the National Transportation Safety Board, the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982), so long as it is an instrumentality of the State of Alaska, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. For purposes of section 2(b) and section 2(d) only, an individual shall be deemed also to have a "current connection with the railroad industry" if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this Act and did not thereafter decline an offer of employment in the same class or craft as the individual's most recent employee service. For purposes of section 2(d) only, an individual shall be deemed to have a "current connection with the railroad industry" if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 or a retirement annuity based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937. For the purposes of section 2(d) only, an individual shall be deemed also to have a "current connection with the railroad industry" if he will have completed ten years of service and (A) he would be neither fully nor currently insured under the Social Security Act if his service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act, or (B) he has no quarters of coverage under the Social Security Act.

(p) The term "annuity" means a monthly sum which is payable on the first day of each calendar month for the accrual during the preceding calendar month.

(q) The terms "quarter" and "calendar quarter" shall mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(r) For purposes of this Act, a person shall be considered to be permanently insured under the Social Security Act on December 31, 1974, if he or she would be fully insured within the meaning of section 214(a) of that Act when he or she attains age 62 solely

on the basis of his or her quarters of coverage under that Act acquired prior to January 1, 1975.

(45 U.S.C. 231)

ANNUITY ELIGIBILITY REQUIREMENTS

SEC. 2. (a)(1) The following-described individuals, if they shall have completed ten years of service and shall have filed application for annuities, shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to annuities in the amounts provided under section 3 of this Act—

(i) individuals who have attained retirement age (as defined in section 216(l) of the Social Security Act);

(ii) individuals who have attained the age of sixty and have completed thirty years of service;

(iii) individuals who have attained the age of sixty-two and have completed less than thirty years of service, but the annuity of such individuals shall be reduced by 1/180 for each of the first 36 months that he or she is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that he or she is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue;

(iv) individuals who have a current connection with the railroad industry, whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (A) have completed twenty years of service or (B) have attained the age of sixty; and

(v) individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment.

(2) For the purposes of paragraph (iv) of subdivision (1), the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent

disqualification for work in such occupation. For purposes of this subdivision and paragraph (iv) of subdivision (1), an employee's "regular occupation" shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation.

(3) Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph (iv) or (v) of subdivision (1) and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains retirement age (as defined in section 216(l) of the Social Security Act). If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains retirement age (as defined in section 216(l) of the Social Security Act), his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled.

(b) An individual who—

(i) has attained age 60 and completed thirty years of service or attained age 65;

(ii) has completed twenty-five years of service;

(iii) is entitled to the payment of an annuity under subsection (a)(1);

(iv) had a current connection with the railroad industry at the time such annuity began to accrue; and

(v) has performed compensated service in at least one month prior to October 1, 1981;

shall, subject to the conditions set forth in subsections (e) and (h), be entitled to a supplemental annuity in the amount provided under section 3 of this Act: *Provided, however,* That in cases where an individual's annuity under subsection (a)(1) begins to accrue on other than the first day of the month, the amount of any supplemental annuity to which he is entitled for that month shall be reduced by one-thirtieth for each day with respect to which he is not entitled to an annuity under subsection (a)(1).

(c)(1) The spouse of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) and (B) has attained the age of 60 and has completed thirty years of service or has attained the age of 62, and

(ii) such spouse (A) has attained retirement age (as defined in section 216(l) of the Social Security Act), or (B) has attained the age of 60 and such individual has completed thirty years of service, or (C), in the case of a wife, has in her care (individually or jointly with her husband) a child who meets the qualifications prescribed in paragraph (iii) of subsection (d)(1) (without regard to the provisions of clause (B) of such paragraph),

shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a spouse's annuity, if he or she has filed application therefor, in the amount provided under section 4 of this Act.

(2) A spouse who would be entitled to an annuity under subdivision (1) or a divorced wife who would be entitled to an annuity under subdivision (4) if he or she had attained retirement age (as defined in section 216(l) of the Social Security Act) may elect upon or after attaining the age of 62 to receive such annuity, but the annuity in any such case shall be reduced by 1/144 for each of the first 36 months that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue, except that the annuity of a divorced wife who was previously entitled to a spouse annuity which was reduced under this subdivision shall be reduced by the same percentage as was applicable to the spouse annuity.

(3) For the purposes of this Act, the term "spouse" shall mean the wife or husband of an annuitant under subsection (a)(1) who (i) was married to such annuitant for a period of not less than one year immediately preceding the day on which the application for a spouse's annuity is filed, or in the month prior to his or her marriage to such annuitant was eligible for an annuity under paragraph (i) or (iv) of subsection (d)(1) or, on the basis of disability, under paragraph (iii) thereof, or is the parent of such annuitant's son or daughter; and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's annuity under subsection (a)(1) began.

(4) The "divorced wife" (as defined in section 216(d) of the Social Security Act) of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) and (B) has attained the age 62;

(ii) such divorced wife (A) has attained retirement age (as defined in section 216(l) of the Social Security Act [1] and (B) is not married; and

(iii) such divorced wife would have been entitled to a benefit under section 202(b) of the Social Security Act as the divorced wife of such individual if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act;

shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a divorced wife's annuity, if she has filed an application therefor, in the amount provided under section 4 of this Act.

(d)(1) The following described survivors of a deceased employee who will have completed ten years of service and will have had a current connection with the railroad industry at the time of his death shall, subject to the conditions set forth in subsections (g) and (h), be entitled to annuities, if they have filed application therefor, in the amounts provided under section 4 of this Act—

[1] So in original. Probably should be followed by a closing parenthesis.

(i) a widow (as defined in section 216 (c) and (k) of the Social Security Act) or widower (as defined in section 216 (g) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) will have attained the age of sixty or (B) will have attained the age of fifty but will not have attained age sixty and is under a disability which began before the end of the period prescribed in subdivision (2), and who, in the case of a widower, was receiving at least one-half of his support from the deceased employee at the time of her death or at the time her annuity under subsection (a)(1) began;

(ii) a widow (as defined in section 216 (c) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) is not entitled to an annuity under paragraph (i), and (B) at the time of filing an application for an annuity under this paragraph, will have in her care a child of such deceased employee, which child is entitled to an annuity under paragraph (iii) (other than an annuity payable to a child who has attained age 18 and is not under a disability);

(iii) a child (as defined in section 216 (e) and (k) of the Social Security Act) of such a deceased employee who (A) will be less than eighteen years of age, or (B) will be less than nineteen years of age and a full-time elementary or secondary school student, or (C) will, without regard to his age, be under a disability which began before he attained age twenty-two or before the close of the eighty-fourth month following the month in which his most recent entitlement to an annuity under this paragraph terminated because he ceased to be under a disability and who is unmarried and was dependent upon the employee at the time of the employee's death;

(iv) a parent (as defined in section 202(h)(3) of the Social Security Act) of such a deceased employee who (A) will have attained the age of sixty and (B) will have received at least one-half of his or her support from such deceased employee at the time of the employee's death and (C) will not have remarried after the employee's death: *Provided, however,* That no parent will be entitled to an annuity under this paragraph on the basis of the deceased employee's compensation and years of service in any case where such employee died leaving a widow or widower or a child who is, or who might in the future become entitled to an annuity under this subsection, but neither this proviso nor clause (B) or (C) of this paragraph shall operate to deny any parent an annuity to the extent and in the amount of the benefit that such parent would have received under the Social Security Act if the service as an employee of the individual, with respect to which such parent would be eligible to receive an annuity under this Act except for this proviso and those clauses, were included in "employment" as defined in the Social Security Act; and

(v) The [1] widow (as defined in section 216(c) of the Social Security Act), who is married, or has been married after the death of the employee, the surviving divorced wife (as defined in section 216(d) of the Social Security Act), and a surviving di-

[1] So in original. Probably should not be capitalized.

vorced mother (as defined in section 216(d) of the Social Security Act) if such widow, surviving divorced wife, or surviving divorced mother would have been entitled to a benefit under section 202(e) or 202(g) of the Social Security Act as the widow, surviving divorced wife, or surviving divorced mother of the employee if all of his service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. For the purpose of this paragraph, the reference in sections 202(e)(3) and 202(g)(3) of the Social Security Act to an individual entitled under section 202(f) of that Act shall include an individual entitled to an annuity under section 2(d)(1)(i) of this Act and an individual entitled to an annuity under section 2(d)(1)(ii) of this Act, and the reference in section 202(e)(3) and section 202(g)(3) of the Social Security Act to an individual entitled under section 202(d) or section 202(h) of that Act shall include an individual entitled to an annuity under section 2(d)(1)(iii) or section 2(d)(1)(iv) of this Act, and the references in section 202(g)(3) of the Social Security Act to an individual entitled under section 202(a) or section 223(a) of that Act shall include an individual entitled to an annuity under section 2(a)(1) of this Act.

(2) The period referred to in clause (B) of subdivision (1)(i) is the period (i) beginning with the latest of (A) the month of the employee's death, (B) in the case of a widow, the last month for which she was entitled to an annuity under paragraph (ii) of subdivision (1) as the widow of the deceased employee, or (C) the month in which the widow or widower's previous entitlement to an annuity as the widow or widower of the deceased employee terminated because her or his disability had ceased and (ii) ending with the month before the month in which she or he attains age sixty, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(3) For purposes of paragraph (i) or (iii) of subdivision (1), a widow, widower, or child shall be under a disability if her or his permanent physical or mental condition is such that she or he is unable to engage in any regular employment. The provisions of subsection (a)(3) of this section as to the proof of disability shall apply with regard to determinations with respect to disability under subdivision (1).

(4) In determining for purposes of this subsection and subdivision (3) of subsection (c) whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be applied deeming, for this purpose, individuals entitled to an annuity under subsection (c) to be entitled to benefits under subsection (b) or (c) of section 202 of the Social Security Act and individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d)(1) to be entitled to a benefit under subsection, (e), (f), or (g) of section 202 of the Social Security Act. For purposes of paragraph (iii) of subdivision (1), a child shall be deemed to have been dependent upon his parent employee if the conditions set forth in sections 202(d) (3), (4), and (9) of the Social Security Act are fulfilled. The provisions of paragraph (7) of section 202(d) of the Social Security Act (defining the terms "full-time elementary or sec-

ondary school student" and "elementary or secondary school") shall be applied by the Board in the administration of this subsection as if the references therein to the Secretary were references to the Board. A child who attains age nineteen at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of paragraph (7) of section 202(d) of the Social Security Act and without the application of subparagraph (B) of such paragraph), but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in section 202(d)(7)(c)(i)[1] of the Social Security Act) shall be deemed (for purposes of determining his continuing or initial entitlement to an annuity under this subsection) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(e)(1) No individual shall be entitled to an annuity under subsection (a)(1) until he shall have ceased to render compensated service to an employer as defined in section 1(a).

(2) An annuity under subsection (a)(1) shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer: *Provided, however,* That this requirement shall not apply to individuals mentioned in paragraphs (iv) and (v) of subsection (a)(1) prior to attaining retirement age (as defined in section 216(l) of the Social Security Act): *Provided further,* That, notwithstanding the provisions of the preceding proviso and of clause (i) of subsection (c)(1) of this section, an annuity shall be paid to the spouse of an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the preceding proviso: *And provided further,* That, notwithstanding the provisions of the first proviso of this subdivision and of clause (iii) of subsection (b)(1) of this section, a supplemental annuity shall be paid to an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the first proviso thereof.

(3) No annuity under subsection (a)(1) or supplemental annuity under subsection (b)(1) shall be paid with respect to any month in which an individual in receipt of an annuity or supplemental annuity thereunder shall render compensated service to an employer. Individuals receiving annuities under subsection (a)(1) shall report to the Board immediately all such compensated service.

(4) No annuity under paragraph (iv) or (v) of subsection (a)(1) shall be paid to an individual with respect to any month in which the individual is under retirement age (as defined in section 216(l) of the Social Security Act) and is paid more than $400 in earnings (after deduction of disability related work expenses from employment or self-employment of any form: *Provided, however,* That for purposes of this subdivision, if a payment in any one calendar month is for accruals in more than one calendar month, such pay-

[1] So in original. Probably should be "202(d)(7)(C)(i)".

ment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such month. Any such individual under the retirement age (as defined in section 216(l) of the Social Security Act) shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to the sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. If pursuant to the first sentence of this subdivision an annuity was not paid to an individual with respect to one or more months in any calendar year, and it is subsequently established that the total amount of such individual's earnings during such year as determined in accordance with that sentence (but exclusive of earnings for services described in subdivision (3)) did not exceed $4,800 (after deduction of disability related work expenses), the annuity with respect to such month or months, and any deduction imposed by reason of the failure to report earnings for such month or months under the third sentence of this subdivision, shall then be payable. If the total amount of such individual's earnings during such year (exclusive of earnings for services described in subdivision (3)) is in excess of $4,800 (after deduction of disability related work expenses), the number of months in such year with respect to which an annuity is not payable by reason of such first and third sentences shall not exceed one month for each $400 of such excess, treating the last $200 or more of such excess as $400; and if the amount of the annuity has changed during such year, any payments of annuities which become payable solely by reason of the limitations contained in this sentence shall be made first with respect to the month or months for which the annuity is larger.

(5) The annuity of a spouse or divorced wife under subsection (c) shall, with respect to any month, be subject to the same provisions of this subsection as the individual's annuity. In addition, the annuity of a spouse or divorced wife under subsection (c) shall not be payable for any month if the individual's annuity under subsection (a)(1) is not payable for such month by reason of the provisions of this subsection.

(f)(1) That portion of the individual's annuity as is computed under section 3(a) of this Act on the basis of (A) his compensation and years of service subsequent to December 31, 1974, and (B) his wages and self-employment income derived from employment and self-employment under the Social Security Act and that portion of the individual's annuity as is computed under section 3(h) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such annuity were a monthly insurance benefit under that Act: *Provided, however,* That the provisions of this subdivision shall be applicable to the annuity of an individual only if such individual would be fully insured under the So-

cial Security Act on the basis of wages and self-employment income derived from employment and self-employment under that act and on the basis of compensation derived from service as an employee after December 31, 1974, if such service as an employee had been included in the term "employment" as defined in that Act. Any person in receipt of an annuity subject to deduction under this subsection shall report to the Board the receipt of excess earnings as defined in paragraph (3) of section 203(f) of the Social Security Act.

(2) That portion of the spouse's or divorced wife's annuity under subsection (c) which is derived from the portion of the individual's annuity subject to deductions under subdivision (1) and that portion of the spouse's annuity as is computed under section 4(e) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such spouse's annuity were a monthly insurance benefit under that Act. In addition, such portion of the spouse's or divorced wife's annuity shall be subject to deductions if the individual's annuity is subject to deductions under subdivision (1) in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit under the Social Security Act.

(3) Deductions shall not be made pursuant to subdivision (1) from that portion of an individual's annuity as is computed under section 3(a) of this Act for any month in which the annuity of such individual is reduced pursuant to section 3(m) of this Act. This subdivision shall be disregarded in determining the applicability and amount of deductions in a spouse's annuity pursuant to subdivision (2) of this subsection.

(4) Deductions shall not be made pursuant to subdivision (2) from that portion of a spouse's annuity as is computed under section 4(a) of this Act for any month in which the annuity of such spouse is reduced due to entitlement to a benefit under title II of the Social Security Act.

(5) If an annuity begins to accrue on other than the first day of a month, subdivisions (1) and (2) of this subsection shall not apply in the year the annuity begins to accrue if the annuitant has no earnings in excess of the monthly exempt amount in such year after the annuity beginning date.

(6)(A) Except as provided in subparagraph (B)—

(i) that portion of the annuity for any month of an individual as is computed under section 3(b) and as adjusted under section 3(g), plus any supplemental amount for such month under section 3(e), and that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d), shall each be subject to a deduction of $1 for each $2 of compensation received by such individual from compensated service rendered in such month to the last person, or persons, by whom such individual was employed before the date on which the annuity of such individual under subsection (a)(1) began to accrue; and

(ii) that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d) shall be subject to a deduction of $1 for each $2 of compensation received by such spouse from compensated serv-

ice rendered in such month to the last person, or persons, by whom such spouse was employed before the date on which the annuity of such spouse under subsection (c)(1) began to accrue.

(B) Any deductions imposed by this subdivision for any month shall not exceed 50 percent of the annuity amount for such month to which such deductions apply.

(g)(1) No annuity shall be paid to a survivor under subsection (d) with respect to any month in which such survivor renders service for compensation as an employee of an employer. Survivors receiving annuities under subsection (d) shall report to the board immediately all such service for compensation.

(2) Deductions, in amounts and at such time or times as the Board shall determine, shall be made from any payments to which a survivor is entitled under subsection (d) until the total of such deductions equals such survivor's annuity under that subsection for any month, if for such month such survivor would be charged with excess earnings under section 203(f) of the Social Security Act or, having engaged in any activity outside the United States, would be charged under such section 203(f) with any excess earnings derived from such activity if it had been an activity within the United States. For purposes of this subdivision the Board shall have the authority to take such actions and to make such determinations and such suspensions of payment of benefits in the manner and to the extent that the Secretary of Health, Education, and Welfare would be authorized to take or to make under section 203(h)(3) of the Social Security Act if the survivors were receiving the annuities to which this subdivision applies under section 202 of such Act: *Provided, however,* That in determining a survivor's excess earnings for a year for the purposes of this subdivision there shall not be included his income from employment or self-employment during months beginning with the month with respect to which he ceases to be qualified for an annuity. Survivors receiving annuities under subsection (d) shall report to the Board the receipt of excess earnings described in this subdivision.

(h)(2) The supplemental annuity provided an individual by subsection (b) shall, with respect to any month, be reduced by the amount of the supplemental pension, attributable to the employer's contribution, that such individual is entitled to receive for that month under any other supplemental pension plan: *Provided, however,* That the maximum of such reduction shall be equal to the amount of the supplemental annuity less any amount by which the supplemental pension is reduced by reason of the supplemental annuity.

(3) If a spouse or divorced wife entitled to an annuity under subsection (c) or a survivor entitled to an annuity under subsection (d) for any month is also entitled to an annuity under subsection (a)(1) for such month, the annuity under subsection (c) or (d) shall be reduced, but not below zero, by an amount equal to the annuity under subsection (a)(1): *Provided, however,* That the provisions of this subdivision shall not apply if either the spouse or survivor or the individual upon whose earnings record the spouse's or survivor's annuity under subsection (c) or (d) is based rendered service as an employee to an employer, or as an employee representative, prior to January 1, 1975.

(4) If an annuitant is entitled to more than one annuity under subsections (c) and (d) for a month, such annuitant shall be entitled to only the larger of such annuities for such month, except that, if such annuitant so elects, he shall instead be entitled to only the smaller of such annuities for such month.

(45 U.S.C. 231a)

COMPUTATION OF EMPLOYEE ANNUITIES

SEC. 3. (a)(1) The annuity of an individual under section 2(a)(1) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the old-age insurance benefit or disability insurance benefit to which such individual would have been entitled under the Social Security Act if all of his or her service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, individuals entitled to an annuity under paragraph (iv) or (v) of such section 2(a)(1) shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act.

(3) In lieu of an annuity amount provided under subdivision (1), the annuity of an individual entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which begins to accrue before the individual attains age 62 shall be in an amount equal to—

(i) for each month prior to the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act as of the date on which such individual's annuity begins to accrue if such individual had attained age 62 on the first day of the month in which his or her annuity begins to accrue and if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act, using for purposes of this computation the number of benefit computation years applicable to a person born in the year in which such individual was born; and

(ii) for months beginning with the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(b)(1) The amount of the annuity of an individual provided under subsection (a) shall be increased by an amount equal to seven-tenths of 1 per centum of the product which is obtained by multiplying such individual's "years of service" by such individual's "average monthly compensation" as determined under this subsection. The annuity amount payable to the individual under this subsection shall be reduced by 25 per centum of the annuity amount computed for such individual under subsection (h)(1) or

(h)(2), and subsection (h)(5), of this section without regard to section 7(c)(1) of this Act. An individual's "average monthly compensation" for purposes of this subsection shall be the quotient obtained by dividing by 60 such individual's total compensation for the 60 months, consecutive or otherwise, during which such individual received that individual's highest monthly compensation, except that no part of any month's compensation in excess of the maximum amount creditable for any individual for such month under subsection (j) of this section shall be recognized. In determining the months of compensation to be used for purposes of this subsection, the total compensation reported for the individual under section 9 of this Act or credited to such individual under subsection (j) of this section for a year divided by the number of months of service credited to such individual under subsection (i) of this section with respect to such year shall be considered the monthly compensation of the individual for each month of service in any year for which records of the Board do not show the amount of compensation paid to the individual on a monthly basis. If the "average monthly compensation" computed under this subsection is not a multiple of $1, it shall be rounded to the next lower multiple of $1.

(2) For purposes of subdivision (1) of this subsection, in determining "average monthly compensation" for an individual who has not engaged in employment for an employer in the 60-month period preceding the month in which such individual's annuity began to accrue, and whose major employment during such 60-month period was for a United States department or agency named in section 1(o) of this Act, the amount of compensation used with respect to each month used in making such determination shall be the product of—

(i) the compensation credited to such individual for such month under paragraph (1) of this subsection; and

(ii) the quotient obtained by dividing—

(I) the average of total wages (as determined under section 215(b)(3)(A)(ii)(I) of the Social Security Act) for the second calendar year preceding the earliest of the year of the individual's death or the year in which an annuity begins to accrue to such individual (disregarding an annuity based on disability which is terminated because such individual has recovered from such disability if such individual engages in any regular employment after such termination); by

(II) the average of total wages (as determined under section 215(b)(3)(A)(ii)(II) of the Social Security Act) for the calendar year during which such month occurred, unless such month occurred prior to calendar year 1951, in which case, the average of total wages so determined for 1951.

In no event shall "average monthly compensation" determined for an individual under this subdivision exceed the maximum "average monthly compensation" which can be determined under subdivision (1) of this subsection for any person retiring January 1 of the year in which such individual's annuity began to accrue.

[Subections (c) and (d) repealed by Pub. L. 97–35 (95 Stat. 631.]

(e) The supplemental annuity of an individual under section 2(b) of this Act shall be $23 plus an additional amount of $4 for each year of service that the individual has in excess of 25 years, but in no case shall the supplemental annuity exceed $43.

(f)(1) If the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section would, before any reductions on account of age, before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act, and disregarding any increases in such total amount which become effective after the date on which such individual's annuity under section 2(a)(1) of this Act begins to accrue, exceed an amount equal to the sum of (A) 100 per centum of his "final average monthly compensation" up to an amount equal to 50 per centum of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of the Internal Revenue Code of 1954) for the calendar year in which such individual's annuity under section 2(a)(1) of this Act begins to accrue, plus (B) 80 per centum of so much of his "final average monthly compensation" as exceeds 50 per centum of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of the Internal Revenue Code of 1954) for the calendar year in which such individual's annuity under section 2(a)(1) of this Act begins to accrue, the supplemental annuity of such individual first, and then, if necessary, the annuity amount of such individual as computed under subsection (b) of this section, shall be reduced until such total amount of such individual's annuity and supplemental annuity equals such sum or until such supplemental annuity and such annuity amount computed under subsection (b) of this section are reduced to zero, whichever occurs first: *Provided, however,* That the provisions of this subdivision shall not operate to reduce the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section below $1,200. For purposes of this subdivision, the "final average monthly compensation" of an individual shall except as provided in the following sentence be determined by dividing the total compensation received by such individual in the two calendar years, consecutive or otherwise, in which he was credited with the highest total compensation during the ten-year period ending with December 31 of the year in which such individual's annuity under section 2(a)(1) of this Act begins to accrue by 24. If the individual's "average monthly compensation" is determined under subdivision (2) of subsection (b) of this section, the "final average monthly compensation" for such individual shall be the average of the compensation for the 24 months in which the compensation determined for the purpose of subdivision (2) of subsection (b) of this section is the highest. For purposes of this subdivision, the term "compensation" shall include "compensation" as defined in section 1(h) of this Act, "wages" as defined in section 209 of the Social Security Act, "self-employment income" as defined in section 211(b) of the Social Security Act, and wages deemed to have been paid under section 217 or 229 of the Social Security Act on account of military service: *Provided, however,* That in no case shall the compensation with respect to any calendar month exceed the limitation on the compensation for such month prescribed in subsection (j) of this sec-

tion. Wages and self-employment income included as compensation for purposes of this subdivision shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the calendar quarter in which credited, in the case of wages paid before 1978, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income and in the case of wages paid after 1977.

(2) If, in the case of an individual whose annuity under section 2(a)(1) of this Act began to accrue prior to January 1, 1983, the annuity (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act and disregarding any amount provided by subsection (h) of this section) plus the supplemental annuity to which such individual is entitled for any month under this Act, together with the annuity, if any, of the spouse of such individual (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act and disregarding any amount provided by section 4(e) of this Act, before any reductions under the provisions of section 2(f) of this Act, is less than the total amount which would have been payable to such individual and his spouse for such month, on the basis of the individual's compensation and years of service, under the provisions of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, disregarding, for purposes of the computations under such Railroad Retirement Act of 1937, compensation for any month after December 31, 1974, in excess of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of the Internal Revenue Code of 1954) for the calendar year 1974, the annuity of such individual and the annuity of such spouse, if any, shall be increased, without regard to the provisions of subdivision (1) of this subsection, proportionately so as to equal such total amount. For the purpose of computing amounts under this subdivision, the Board shall have the authority to approximate the effect of the reductions prescribed by sections 3(a)(2) and 3(a)(3) of the Railroad Retirement Act of 1937. For purposes of computing amounts payable under the Railroad Retirement Act of 1937, any increases in the amounts determined under the first proviso of section 3(e) of such Act which would have become effective after December 31, 1974, shall be disregarded.

(3) If for any month in which an annuity accrues and is payable under this Act the annuity to which an individual is entitled under this Act (or would have been entitled except for a reduction pursuant to a joint and survivor election), together with the annuity, if any, of the spouse and divorced wife of such individual, is less than the total amount, or the additional amount, which would have been payable to all persons for such month under the Social Security Act if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act, the annuities of the individual and spouse shall be increased proportionately to such total amount, or such additional amount: *Provided, however,* That if an annuity accrues to an individual or a spouse for a part of a month, the amount payable for such part of a month under this subdivision shall be one-thirtieth of the amount payable under this subdivision for an entire

month, multiplied by the number of days in such part of a month. For purposes of this subdivision, (i) persons not entitled to an annuity under section 2 of this Act shall not be included in the computation under this subdivision except a spouse who could qualify for an annuity under section 2(c) of this Act if the individual from whom the spouse's annuity under this Act would derive had attained age 60 or 62, as the case may be, and such individual's children who meet the definition as such contained in section 216(e) of the Social Security Act; (ii) after an annuity has been certified for payment and this subdivision was inapplicable after allowing for any waiting period under section 223(c)(2) of the Social Security Act, and after having considered the inclusion of all persons who were then eligible for inclusion in the computation under this subdivision, or was then applicable but later became inapplicable, any recertification in such annuity under this subdivision shall not take into account persons not entitled to an annuity under section 2 of this Act except a spouse who could qualify for an annuity under section 2(c) of this Act when she attains age 60 or 62, as the case may be, if the individual from whom the spouse's annuity would derive had attained age 60 or 62, as the case may be, and who was married to such individual at the time he applied for his annuity; and (iii) in computing the amount to be paid under this subdivision the only benefits under title II of the Social Security Act which shall be considered shall be those to which the persons included in the computation are entitled.

(g)(1) Effective with the date of any increase after January 31, 1984, in monthly insurance benefits under the Social Security Act which occurs, or which would have occurred had there not been a general benefit increase under that Act, pursuant to the automatic cost-of-living provisions of section 215(i) of Act, that portion of the annuity of an individual which is computed under subsection (b) of this section shall, if such individual's annunity under section 2(a)(1) of this Act began to accrue on or before the effective date of a particular increase under this subdivision, be increased by 32.5 per centum of the percentage increase in the index which is used, or which would have been used had there not been a general benefit increase under the Social Security Act, in increasing benefits under the Social Security Act pursuant to the automatic cost-of-living provisions of section 215(i) of that Act. Any increase under this subsection shall not be deferred and shall be reflected in all payments made to annuitants after such increase under this subsection becomes effective.

(2) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act are increased, that portion of the annuity of an individual which is computed under subsection (b) of this section as increased under subdivision (1) of this subsection shall, if such individual's annuity under section 2(a)(1) of this Act began to accrue in or before the year in which such first increase under the Social Security Act became effective, be reduced by the dollar amount by which that portion of the annuity provided such individual's under subsection (a) of this section was increased, after any reduction under subsection (m) of this section, as a result of such increase or increases under the Social Security Act until the

total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such individual under subsection (a), as reduced under subsection (m), prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(h)(1) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 2(a)(1) of this Act began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(2) The amount of the annuity provided under subsections (a) and (b) of this section to an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which he last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act and if he

had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this Act, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this Act and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(3) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 2(a)(1) of this Act began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the wife's, husband's, widow's or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the primary insurance amount to which such individual would have been entitled upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(4) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (3) of this subsection, but (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act as of December 31 of the cal-

endar year prior to 1975 in which such individual last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the smaller of (C) the wife's, husband's, widow's, or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last performed service as an employee under this Act or (D) the primary insurance amount to which such individual would have been entitled upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act, as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last performed service as an employee under this Act and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(5) The amount computed under subdivision (1), (2), (3), or (4) of this subsection shall be increased by the same percentage, or percentages, as benefits under the Social Security Act are increased, or would have been increased had there been no general benefit increases under the Social Security Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act, during the period from January 1, 1975, to the earlier of the date on which the individual's annuity under section 2(a)(1) of this Act began to accrue or January 1, 1982.

(6) No amount shall be payable to an individual under subdivision (3) or (4) of this subsection unless the entitlement of such individual to such amount had been determined prior to the date of the enactment of this subdivision.

(i)(1) The "years of service" of an individual shall include all his service subsequent to December 31, 1936.

(2) The "years of service" of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: *Provided, however,* That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative: *Provided further,* That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as through military service were service rendered as an employee: *And provided further,* That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act on the

basis of such individual's wages and self-employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: *And provided further,* That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

(3) The "years of service" of an individual who was an employee on August 29, 1935, shall, if the total number of his "years of service" as determined under subdivisions (1) and (2) is less than thirty, also include his service prior to January 1, 1937, but not so as to make his total years of service exceed thirty: *Provided, however,* That with respect to any such individual who rendered service to any employer subsequent to December 31, 1936, and who on August 29, 1935, was not an employee of an employer conducting the principal part of its business in the United States, no greater proportion of his service rendered prior to January 1, 1937, shall be included in his "years of service" than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service subsequent to December 31, 1936, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service rendered anywhere to an employer subsequent to December 31, 1936. Where the "years of service" include only part of the service prior to January 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service.

(4) Where for any calendar year after 1984 an individual has performed service for compensation in less than twelve months of the calendar year but has received compensation in excess of an amount determined by multiplying the number of months in the year in which such individual performed service for compensation by an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, the individual shall be deemed to have rendered service for compensation in that number of months in the calendar year, but not to exceed twelve, which is equal to the quotient of the amount of such individual's compensation for the calendar year divided by an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, with any remainder produced by this computation increasing the quotient by one, but an individual shall not be deemed under this subdivision to have rendered service for compensation in any month in which such individual was neither in an employment relation to one or more employers nor an employee representative.

(j) The "average monthly compensation" shall be computed in the manner specified in section 3(b) of this Act, except (1) that with respect to service prior to January 1, 1937, the monthly compensa-

tion shall be the average compensation paid to an employee with respect to calendar months included in his years of service in the years 1924–1931, and (2) the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940 through August 1941: *Provided, however,* That where service in the period 1924 through 1931 in the one case, or in the period September 1940 through August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determing [1] the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of $300 for any month before July 1, 1954, or in excess of $350 for any month after June 30, 1954, and before June 1, 1959, or in excess of $400 for any month after May 31, 1959, and before November 1, 1963, or in excess of $450 for any month after October 31, 1963, and before October 1, 1965, or in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965, shall be recognized. If for any calendar year after 1984 an employee has received compensation of less than one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954 in one or more months of the calendar year, the total compensation paid such employee in the calendar year (without regard to the limitation on the amount of compensation provided in the preceding sentence) shall be deemed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in the service of one or more employers for compensation or will have performed service for compensation as an employee representative, but this sentence shall not operate to increase the employee's compensation for any month above an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954. If the employee earned compensation in service after June 30, 1937, and after the last day of the calendar year in which he attained age sixty-five, such compensation and service shall be disregarded in computing the average monthly compensation if the result of taking such compensation into account in such computation would be to diminish his annuity. Where an employee claims credit for months of service rendered within two years prior to his retirement from the service of an employer, with respect to which the employer's return pursuant to section 9 of this Act has not been

[1] So in original. Probably should be "determining".

entered on the records of the Board before the employee's annuity could otherwise be certified for payment, the Board may, in its discretion (subject to subsequent adjustment at the request of the employee) include such months in the computation of the annuity without further verification and may consider the compensation for such months to be the average of the compensation for months in the last period for which the employer has filed a return of the compensation of such employee and such return has been entered on the records of the Board.

(k) The annuity of an individual who shall have been an employee representative shall be determined in the same manner and with the same effect as if the employee organization by which he shall have been employed were an employer.

(l)(1) Except as provided in subdivision (2) of this subsection, if an annuity awarded under section 2(a)(1)(iii) or under section 2(c)(2) of this Act is increased or decreased either by a change in the law or by a recomputation, the reduction on account of age in the amount of such increase or decrease shall be computed as though such increased or decreased annuity amount had been in effect for and after the month in which the annuitant first became entitled to such annuity under section 2(a)(1)(iii) or section 2(c)(2).

(2) The reduction required under section 2(a)(1)(iii) or section 2(c)(2) may be applied separately to each of the annuity amounts computed under subsections (a), (b), and (h) of this section and subsections (a), (b), and (e) of section 4. For this purpose, in any case in which an annuity amount was computed for an individual under the provisions of this Act or of Public Law 93–445 prior to October 1, 1981, an annuity amount computed under subsections (a), (b), (c), (d) and (h) of this section, subsection (a), (b), or (e) of section 4, and section 204 or section 206 of Public Law 93–445 shall be reduced by its proportionate share of the reduction on account of age. For purposes of the preceding sentence, annuity amounts computed for an individual under subsections (b), (c), and (d) of section 3 prior to October 1981 shall be considered as one annuity amount.

(m) The annuity of any individual under subsection (a) of this section for any month shall, after any reduction pursuant to paragraph (iii) of section 2(a)(1), be reduced, but not below zero, by the amount of any monthly benefit (before any deductions on account of work) payable to that individual for that month under title II of the Social Security Act.

(45 U.S.C. 231b)

COMPUTATION OF SPOUSE AND SURVIVOR ANNUITIES

SEC. 4. (a)(1) The annuity of a spouse or divorced wife of an individual under section 2(c) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse or divorced wife would have been entitled under the Social Security Act if such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, if an individual is entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which did not begin to accrue before such individual attained age 62, the spouse of such individual entitled to an annuity under clause (B) of paragraph (ii) of section 2(c)(1) of this Act shall be deemed to have attained retirement age (as defined in section 216(l) of the Social Security Act [1].

(3) In the case of an individual entitled to an annuity under section 2(a)(1)(ii) of this Act which began to accrue before such individual attained age 62, the annuity of the spouse of such individual under section 2(c) of this Act shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to—

(i) for each month prior to the first month throughout which both the individual and the spouse are age 62, 50 per centum of that portion of the individual's annuity as is, or was prior to such individual's attaining age 62, computed under section 3(a)(3)(i) of this Act, reduced to the same extent such amount would be reduced under section 202(b)(4) of the Social Security Act (in the case of a wife) or under section 202(c)(2) of the Social Security Act (in the case of a husband) as if such amount were a wife's insurance benefit or a husband's insurance benefit, respectively, under such Act; and

(ii) for months beginning with the first month throughout which both the individual and the spouse are age 62, the amount (after any reduction on account of age are based on the spouse's age at the time the amount under this paragraph first becomes payable but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(4) In the case of an individual entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act, the annuity of the spouse of such individual entitled to an annuity under section 2(c)(1)(ii)(B) of this Act shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to the amount (after any reduction on account of age but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. For purposes of this subdivision, spouses who have not attained age 62 shall be deemed to have attained age 62.

(b) The amount of the annuity of a spouse of an individual provided under subsection (a) of this section shall be increased by an amount equal to 45 per centum of that portion of the individual's annuity as is computed under subsection (b) of section 3 of this Act: *Provided, however,* That if the spouse is entitled to an annuity amount provided by subsection (e)(1) or (e)(2) of this section, the amount of such spouse's annuity provided by the preceding provi-

[1] So in original. Probably should be followed by a closing parenthesis.

sions of this subsection shall be reduced by the amount by which the amount computed in accordance with the provisions of clause (C) of subsection (e)(1) or (e)(2) of this section was increased by the Social Security Amendments of 1965, 1967, and 1969, disregarding (A) the amount of any such increase resulting from the Social Security Amendments of 1967 equal to, or less than, the excess of $5 over 5.8 per centum of the lesser of (i) the amount computed under clause (C) of subsection (e)(1) or (e)(2) of this section before any increases derived from legislation enacted after the Social Security Amendments of 1967 or (ii) the amount of the spouse's annuity to which such spouse would have been entitled under section 2(e) of the Railroad Retirement Act of 1937, without regard to section 3(a)(2) of that Act or to increases derived from legislation enacted after 1968 and before any reduction on account of age, on the basis of the individual's compensation and years of service prior to January 1, 1975, and (B) the amount of any such increase resulting from the Social Security Amendments of 1969 equal to, or less than, $5: *Provided further,* That if the spouse is entitled to an annuity under section 2(a)(1) of this Act, the amount of annuity of such spouse under this subsection shall,[1] be increased by an amount equal to the amount by which the amount of the annuity of such spouse provided under subsection (a) of this section was reduced by reason of the provisions of subsection (i)(2) of this section (disregarding, for this purpose, any increase in such reduction which becomes effective after the later of the date such spouse's annuity under section 2(c) of this Act began to accrue or the date such spouse's annuity under section 2(a)(1) of this Act began to accrue). The Board shall have the authority to approximate the amount of any reduction prescribed by the first proviso of this subsection.

(c) If (A) the total amount of the annuity of a spouse of an individual as computed under the preceding subsections of this section as of the date on which the annuity of such individual under section 2(a)(1) of this Act began to accrue (before any reduction due to such spouse's entitlement to a monthly insurance benefit under the Social Security Act) plus (B) the total amount of the annuity and supplemental annuity of the individual (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) subject to the provisions of section 3(f)(1) of this Act would, before any reductions in the amounts specified in clauses (A) and (B) on account of age and disregarding any increases in such amounts which become effective after the date on which the individual's annuity under section 2(a)(1) of this Act began to accrue, exceed the amount determined under clauses (A) and (B) of section 3(f)(1) of this Act, the portion of the annuity of such spouse determined under subsection (b) of this section as of the date on which the individual's annuity under section 2(a)(1) began to accrue shall be reduced until the sum of the amounts specified in clauses (A) and (B) of the subsection equals the amount determined under clauses (A) and (B) of section 3(f)(1) or until such amount under subsection (b) is reduced to zero, whichever occurs first. If, after such amount under subsection (b) is reduced to zero, the sum of the remaining amounts specified in clauses (A) and (B)

[1] So in original. The comma probably should not appear.

of this subsection still exceeds the amount determined under clauses (A) and (B) of section 3(f)(1), the supplemental annuity of the individual first, and then, if necessary, the annuity amount of the individual computed under subsections (b), (c), and (d) of section 3 as of the date on which the individual's annuity under section 2(a)(1) began to accrue, shall be reduced until the amounts specified in clauses (A) and (B) of this subsection equals the amounts determined under clauses (A) and (B) of section 3(f)(1) or until such supplemental annuity and such annuity amount are reduced to zero, whichever occurs first. Notwithstanding the preceding provisions of this subsection, the provisions of this subsection shall not operate to reduce the total of the amounts specified in clauses (A) and (B) of this subsection below $1,200.

(d)(1) That portion of the annuity of the spouse of an individual as is determined under subsections (b) and (c) of this section shall be increased by the same percentage, or percentages, as the individual's annuity is, or has been, increased pursuant to the provisions of section 3(g)(1) of this Act.

(2) That portion of the annuity of the spouse of an individual as is determined under subsection (b) of this section prior to any determination under subsection (c) of this subsection [1] shall, if the annuity of such spouse is not subject to reduction under subdivision (3) of this subsection, be reduced by an amount equal to 50 per centum of the dollar amount by which the annunity of the individual was reduced under section 3(g)(2) of this Act. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(3) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under sectoin 202 of the Social Security Act are increased, that portion of the annuity of the spouse of an individual as is determined under subsections (b), (c), and (d)(1) of this section shall, if such spouse's annuity under section 2(c) of this Act began to accrue in or before the year in which such first increase under the Social Security Act became effective, be reduced by the dollar amount by which that portion of the annuity provided such spouse under subsection (a) of this section was increased, after any reduction under subsection (i) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amout of such reduction or reductions equals 5 per centum of the annuity amount provided such spouse under subsection (a), as reduced under subsection (i), prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(e)(1) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 2(a)(1) of this Act began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) such individual will have

[1] So in original. Probably should be section.

completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of her or his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act, if such individual had no wages or self-employment income under the Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under the Act: *Provided, however,* That the increase under the provisions of this subdivision shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 3(h)(1) of this Act prior to any increases under the provisions of section 3(h)(5) of this Act.

(2) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) such individual will have completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his or her wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act, if such individual had no wages or self-employment income under that Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under that Act: *Provided, however,* That the increase under the provisions of this subdivision, shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 3(h)(2) of this Act prior to any increases under the provisions of section 3(h)(5) of this Act.

(3) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual is entitled to an amount determined under the provi-

sions of section 3(h)(1) or 3(h)(2) of this Act and (B) such spouse is not entitled to an amount determined under the provisions of subdivision (1) or (2) of the subsection, shall be increased by an amount equal to 50 per centum of the portion of the annuity of such individual determined under the provisions of section 3(h)(1) or 3(h)(2) of this Act prior to any increases under the provisions of section 3(h)(5) of this Act.

(4) The amount determined under the provisions of subdivision (1), (2), or (3) of this subsection shall be increased by the same percentage or percentages, as wife's and husband's insurance benefits under section 202 of the Social Security Act are increased, or would have been increased had there been no general benefit increases under the Social Security Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act, during the period from January 1, 1975, to the earlier of the date on which the individual's annuity under section 2(a)(1) of this Act began to accrue or January 1, 1982.

(5) No amount shall be payable to a person under subdivision (1), (2), or (3) of this subsection unless the entitlement of such person to such amount had been determined prior to the date of the enactment of this subdivision.

(f)(1) The annuity of a survivor of a deceased employee under section 2(d) of this Act shall be in an amount equal to the amount (before any deductions on account of work) of the widow's insurance benefit, widower's insurance benefit, mother's insurance benefits, parent's insurance benefit, or child's insurance benefit, whichever is applicable, to which he or she would have been entitled under the Social Security Act if such deceased employee's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. In the case of a widow or widower who is entitled to an annuity under section 2(d) of this Act solely on the basis of railroad service which was performed prior to January 1, 1937, the amount provided under this section with respect to any month shall not be less than the first amount appearing in column IV of the table appearing in section 215(a) of the Social Security Act as in effect on December 31, 1974, after reduction in accordance with the provisions of section 202(k) and 202(q) of that Act in the same manner as would be applicable to a widow's insurance benefit or widower's insurance benefit payable under section 202(e) or 202(f) of that Act.

(2) For purposes of this subsection—

(i) a widow or widower or a parent who is entitled to an annuity based on age under section 2(d)(1) of this Act and who has not attained age 62 shall be deemed to be age 62: *Provided, however,* That the provisions of this paragraph shall not apply in the case of a widow or widower who was entitled to an annuity under section 2(d)(1) on the basis of disability for the month before the month in which he or she attained age 60,

(ii) a widow or widower or a child who is entitled to an annuity under section 2(d)(1) of this Act on the basis of disability shall be deemed to be entitled to a widow's insurance benefit, a widower's insurance benefit, or a child's insurance benefit under the Social Security Act on the basis of disability, and

(iii) The [1] provisions of paragraphs (i) and (ii) of this subdivision shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entited to such annuity on the basis of the provisions of section 2(d)(1)(v) of this Act.

(3) The annuity amount provided to a widow or widower under the last sentence of subdivision (1) shall be increased by the same percentage or percentages as insurance benefits payable under section 202 of the Social Security Act are increased after the date on which such annuity begins to accrue.

(g)(1) The amount of the annuity provided under subsection (f)(1) (other than the last sentence thereof) for a survivor of a deceased individual shall be increased by an amount equal to the appropriate one of the following percentages of that portion of the annuity computed under section 3(b) of this Act, before any reduction on account of age and without regard to any reduction under section 3(g)(2) of this Act, to which such deceased individual would have been entitled for the month such survivor's annuity under section 2(d) of this Act began to accrue if such individual were living (deeming for this purpose that if such individual died before becoming entitled to an annuity under section 2(a)(1) of this Act, such individual became entitled to an annuity under subdivision (i) of such section 2(a)(1) in the month in which such individual died):

(i) In the case of a widow or widower, the increase shall be equal to 50 per centum of such portion of the deceased individual's annuity, but the amount of the annuity so determined shall be subject to reduction on account of age in the same manner as is applicable to the annuity amount determined for the widow or widower under subsection (f) and shall be subject to increase as provided in subdivision (4) of this subsection.

(ii) In the case of a parent, the increase shall be equal to 35 centum of such portion of the deceased individual's annuity.

(iii) In the case of a child, the increase shall be equal to 15 per centum of such portion of the deceased individual's annuity.

(2) Whenever the total amount of the increases based on the deceased individual's portion of the annuity under section 3(b) of this Act as determined under subdivision (1) of this subsection for all survivors of a deceased employee is—

(i) less than an amount equal to 35 per centum of such portion of the deceased individual's annuity, the total increase shall, before any deductions under section 2(g) of this Act, be increased proportionately until the total increase is equal to 35 per centum of such portion of the deceased individual's annuity; or

(ii) more than an amount equal to 80 per centum of such portion of the deceased individual's annuity, the total increase shall, before any deductions under section 2(g) of this Act and before any reduction on account of age, be reduced proportionately until the total increase is equal to 80 per centum of such portion of the deceased individual's annuity.

[1] So in original. Probably should be "the".

(3) An annuity determined under this subsection for a month prior to the month in which application is filed, shall be reduced to any extent that may be necessary so that it will not render erroneous any annuity which, before the filing of such application, the Board has certified for payment for such prior month.

(4) If a widow or widower of a deceased employee is entitled to an annuity under section 2(a)(1) of this Act and if either such widow or widower or such deceased employee will have completed 10 years of service prior to January 1, 1975, the amount of the annuity of such widow or widower under subdivisions (1) through (3) of this subsection shall be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act) on the basis of the deceased employee's remuneration and service prior to January 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act are increased during the period from January 1, 1975, to the later of the date on which such widow's or widower's annuity under section 2(a)(1) of this Act began to accrue or the date on which such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue, exceeds (B) the total of the annuity amounts to which such widow or widower was entitled (after any reductions pursuant to subsection (i)(2) of this section but before any deductions on account of work) under the preceding provisions of this subsection, subsection (f) of this section, and the amount determined under subsection (h) of this section before the proviso, as of the later of the date on which such widow's or widower's annuity under section 2(a)(1) of this Act began to accrue or the date on which such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue. If a widow or widower of a deceased employee is not entitled to an annuity under section 2(a)(1) of this Act or to an old-age insurance benefit or a disability insurance benefit under the Social Security Act, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause the total of the annuity amounts to which such widow or widower is entitled (before any deductions on account of work) under this subsection and subsection (f)(1) of this section to equal the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 2(e) and 2(f) of this Act) as a spouse under subsections (a), (b), and (e) of this section (after any reduction on account of age) in the month preceding the employee's death. If a widow or widower of a deceased employee is entitled to an annuity under section 2(a)(1) of this Act or to an old-age insurance benefit or a disability insurance benefit under the Social Security Act, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause (A) the total of the annuity amounts to which such widow or widower is entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act or subsection (i)(2)

of this section but before any deductions on account of work) under this subsection and subsection (f) of this section to equal (B)(i) the total of the annuity amounts, if any, to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 2(e) and 2(f) of this Act) as a spouse under subsections (a), (b), and (e) of this section (after any reduction on account of age) in the month preceding the employee's death less (ii), if such widow or widower is entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act but was not entitled to such a benefit in the month preceding the employee's death, the amount by which the annuity amount payable under subsection (a) of this section to such widow or widower as a spouse in the month preceding the employee's death would have been reduced by reason of section 202(k) or 202(q) of the Social Security Act if such widow or widower had been entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act in the month preceding the employee's death in an amount equal to the amount of such benefit at the time such benefit first began to accrue to such widow or widower.

(5) This subsection shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 2(d)(1)(v) of this Act.

(6) That portion of the annuity of a survivor of an individual determined under subdivisions (1) and (2) of this subsection shall be increased whenever, and by the same percentage or percentages as, the annuity of the individual would have been increased pursuant to section 3(g)(1) of this Act if such individual were still living.

(7) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act are increased, that portion of the annuity of a survivor of a deceased individual as is determined under subdivisions (1) and (2) of this subsection, or under section 4(g) of this Act as in effect before amendment by section 1119(g) of Public Law 97–35, shall, if such survivor's annuity under section 2(d) of the Act began to accrue before the effective date of such first increase under the Social Security Act, be reduced by the dollar amount by which that portion of the annuity provided such survivor under subsection (f) of this section was increased, after any reduction under subsection (i) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such survivor under subsection (f), as reduced under subsection (i), prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(8) That portion of the annuity of a survivor of a deceased individual as is determined under subdivisions (1) and (2) of this subsection shall, if the annuity of such survivor is not subject to reduction under subdivision (7) of this subsection, be reduced by an amount equal to the dollar amount by which the annuity of the deceased individual was reduced under section 3(g)(2) of this Act or would have been reduced under such section 3(g)(2) if such deceased individual had been living at the time such survivor annuity

under section 2(d) of this Act began to accrue (deeming for this purpose, if such individual died before becoming entitled to an annuity under section 2(a)(1) of this Act, that such individual became entitled to an annuity under paragraph (i) of such section 2(a)(1) in the month in which such individual died). In a case where the survivor of a deceased individual is not entitled to a monthly insurance benefit under the Social Security Act, the reduction provided by the preceding sentence of this subdivision shall be equal to the dollar amount by which the annuity of the deceased individual would have been reduced under section 3(g)(2) of this Act if the annuity of such deceased individual had not been subject to reduction under section 3(m) of this Act. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(9) That portion of the annuity of a survivor of a deceased individual as is determined under section 4(g) of this Act as in effect before amendment by section 1119(g) of Public Law 97–35 shall, if the annuity of such survivor is not subject to reduction under subdivision (7) of this subsection, be reduced by an amount equal to the dollar amount by which the annuity of the deceased individual was reduced under section 3(g)(2) of this Act or, if such survivor is not entitled to a monthly insurance benefit under the Social Security Act, would have been reduced under such section 3(g)(2) if the annuity of such deceased individual had not been subject to reduction under section 3(m) of this Act. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(h)(1) The amount of the annuity of the widow or widower of a deceased employee determined under subsections (f) and (g) of this section, if such deceased employee will have completed ten years of service prior to January 1, 1975, and such widow or widower will have been permanently insured under the Social Security Act of[1] December 31, 1974, shall be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act), on the basis of the deceased employee's remuneration and service prior to January 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act are increased during the period from January 1, 1975, to January 1, 1982 or, if earlier, to the later of the date on which such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue or the date beginning the first month for which such widow or widower is entitled to an old age insurance benefit or disability insurance benefit under the Social Security Act, exceeds (B) the total of the annuity amounts to which such widow or widower was entitled (after any reductions pursuant to section 202(k) or 202(f) of the Social Security Act and subsection (i)(2) of this section but before any deductions on account of work) under subsections (f) and (g) of this

[1] So in original. Probably should be "on".

section as to the later of the date on which such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue or the date beginning the first month for which such widow or widower is entitled to an old-age insurance benefit or disability insurance benefit under the Social Security Act: *Provided, however,* That, if a widow or widower was entitled (or would have been entitled except for the provisions of section 2(e) or 2(f) of this Act) to an annuity amount under subdivision (1) or (2) of subsection (e) of this section in the month preceding the employee's death, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause (A) the total of the annuity amounts to which such widow or widower is entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act but before any deductions on account of work) under subsections (f) and (g) of this section and the preceding provisions of this subsection as of the date such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue to equal (B) the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of section 2(e) or 2(f) of this Act) as a spouse under subsections (a), (b), and (e) of this section (after any reductions on account of age) in the month preceding the employee's death.

(2) Subdivision (1) of this subsection shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 2(d)(1)(v) of this Act. No amount shall be payable to a person under subdivision (1) of this subsection unless the entitlement of such person to such amount had been determined prior to the date of the enactment of this subdivision.

(i)(1) The annuity of any spouse or divorced wife under subsection (a) of this section for any month shall, after deduction pursuant to section 2(c)(2) be reduced, but not below zero, by the amount of any insurance benefit (before any deduction on account of work) payable to such spouse or divorced wife for that month under title II of the Social Security Act.

(2) If a spouse or divorced wife entitled to an annuity under section 2(c) of this Act or a survivor entitled to an annuity under section 2(d) of this Act for any month is also entitled to an annuity under section 2(a)(1) of this Act for such month, the annuity amount of such spouse or divorced wife determined under subsection (a) of this section or of such survivor under subsection (f) of this section shall, after any reduction pursuant to subdivision (1) of this subsection, be reduced by the amount of the annuity of such spouse or such survivor determined under section 3(a) of this Act.

(3) The annuity of any survivor under subsection (f) of this section shall be reduced, but not below zero, by the amount of any insurance benefit (before any deduction on account of work) payable to such survivor under title II of the Social Security Act, unless in computing the amount under subsection (f) a reduction was made for such insurance benefit pursuant to section 202(k) of the Social Security Act.

(45 U.S.C. 231c)

ANNUITY BEGINNING AND ENDING DATES

SEC. 5. (a) Subject to the limitations set forth below, an annuity under section 2 of this Act shall begin with the month in which eligibility therefor was otherwise acquired, but—

(i) not earlier than the date specified in the application therefor;

(ii) in the case of an applicant otherwise entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) or under section 2(d)(1)(i) on the basis of disability, not earlier than the later of (A) the first day of the sixth month following the onset date of disability for which such annuity is awarded or (B) the first day of the twelfth month before the month in which the application therefor was filed;

(iii) in the case of an applicant otherwise entitled to an annuity under section 2(a)(1), 2(c), or 2(d) where paragraph (ii) does not apply, not earlier than the latest of (A) the first day of the sixth month before the month in which the application therefor was filed, (B) the first day of the month in which the application therefor was filed if the effect of beginning such annuity in an earlier month would result in a greater age reduction in the annuity, unless beginning the annuity in the earlier month would enable an annuity under section 2(c) which is not subject to an age reduction to be payable in such earlier month, (C) in the case of an applicant otherwise entitled to an annuity under section 2(a)(1) or 2(c), the date following the last day of compensated service of the applicant, or (D) in the case of an applicant otherwise entitled to an annuity under section 2(a)(1) or 2(c), the first day of the first month throughout which the applicant meets the age requirement for the annuity applied for;

(iv) in the case of an applicant otherwise entitled to an annuity under section 2(c)(4) or 2(d)(1)(v) of this Act, not earlier than the month an annuity would begin to accure to such individual under such section if section 202(j)(1) and section 202(j(4) of the Social Security Act were applicable to this Act. [1]

(v) an annuity amount provided by section 3(h)(1) or 3(h)(2) shall not be paid to an individual otherwise eligible therefor for any month before the month such individual would be entitled, upon filing an application therefor, to an old-age insurance benefit or a disability insurance benefit under title II of the Social Security Act and an annuity amount provided by section 3(h)(3) or section 3(h)(4) shall not be paid to an individual otherwise eligible therefor for any month before the month such individual would be entitled, upon filing an application therefore, [2] to an insurance benefit as a wife, husband, widow, or widower under title II of the Social Security Act;

(vi) an annuity amount provided by section 4(e)(1) or 4(e)(2) shall not be paid to a spouse otherwise eligible therefor for any month prior to the month such spouse would be entitled, upon filing an application therefor, to an old-age or dis-

[1] So in original. Probably should be a semi-colon.
[2] So in original. Probably should be "therefor".

ability insurance benefit under title II of the Social Security Act; and

(vii) an annuity amount provided by section 4(e)(3) shall not be paid to a spouse otherwise eligible therefor for any month prior to the month such spouse would be entitled, upon filing an application therefor, to a wife's or husband's insurance benefit under title II of the Social Security Act.

For the purpose of determining annuity amounts provided under sections 3(a), 4(a), and 4(f) of this Act, the provisions with respect to the beginning dates of annuities set forth in this subsection shall be deemed to govern the beginning dates of monthly benefits provided under the Social Security Act.

(b) An application for any payment under this Act shall be made and filed in such manner and form as the Board may prescribe. An application filed with the Board for an annuity under this Act shall, unless the applicant specified otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this Act or title II of the Social Security Act. An individual who was entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act for the month preceding the month in which he attained retirement age (as defined in section 216(l) of the Social Security Act), shall be deemed to have filed an application for an annuity under paragraph (i) of section 2(a)(1) on the date on which he attained retirement age (as defined in section 216(l) of the Social Security Act), and a widow or widower who was entitled to an annuity under section 2(d)(1) of this Act on the basis of disability for the month preceding the month in which she or he attained age 60, shall be deemed to have filed an application for an annuity under such section 2(d)(1) on the basis of age on the date on which she or he attained age 60.

(c)(1) An individual's entitlement to an annuity under paragraph (i), (ii), or (iii) of section 2(a)(1) or to a supplemental annuity under section 2(b) shall end with the month preceding the month in which he dies.

(2) An individual's entitlement to an annuity under paragraph (iv) or (v) of section 2(a)(1) shall end on (A) the last day of the second month following the month in which he ceases to be disabled as provided for purposes of such paragraphs, (B) the last day of the month preceding the month in which he attains retirement age (as defined in section 216(l) of the Social Security Act), or (C) the last day of the month preceding the month in which he dies, whichever first occurs.

(3) The entitlement of a spouse of an individual to an annuity under section 2(c) shall end on the last day of the month preceding the month in which (A) the spouse or the individual dies, (B) the spouse and the individual are absolutely divorced, or (C) in the case of a wife who does not satisfy the requirements of clause (ii)(A) or (ii)(B) of section 2(c)(1) (other than a wife who is receiving such annuity by reason of an election under section 2(c)(2)), such wife no longer has in her care a child described in clause (ii)(C) of section 2(c)(1), whichever first occurs. The entitlement of the divorced wife of an individual to an annuity under section 2(c) shall end on the last day of the month preceding the month in which (A)

the divorced wife or the individual dies or (B) the divorced wife remarries.

(4) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 2(d)(1) on the basis of age shall end on (A) the last day of the month preceding the month in which she or he dies or (B) the last day of the month preceding the month in which she or he remarries after the employee's death, whichever first occurs.

(5) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 2(d)(1) on the basis of disability shall end on (A) the last day of the month preceding the month in which she or he dies, (B) the last day of the month preceding the month in which she or he remarries after the employee's death, (C) the last day of the second month following the month in which she or he ceases to be disabled as provided for purposes of such paragraph, or (D) the last day of the month preceding the month in which she or he attains age 60, whichever first occurs.

(6) The entitlement of a widow of a deceased employee to an annuity under paragraph (ii) of section 2(d)(1) shall end on (A) the last day of the month preceding the month in which she dies, (B) the last day of the month preceding the month in which she remarries after the employee's death, or (C) the last day of the month preceding the month in which she no longer has in her care a child described in clause (B) of such paragraph (ii), whichever first occurs.

(7) The entitlement of a child of a deceased employee to an annunity under paragraph (iii) of section 2(d)(1) shall end on (A) the last day of the month preceding the month in which he or she dies, (B) the last day of the month preceding the month in which he or she marries, (C) the last day of the month preceding the month in which he or she attains age 18 and does not meet the qualifications set forth in clause (B) or (C) of such paragraph (iii), (D) the last day of the month preceding (i) the month during no part of which he or she if a full-time elementary or secondary school student or (ii) the month in which he or she attains age 19, and does not meet the qualifications set forth in clause (A) or (C) of such paragraph (iii), or (E) the last day of the second month following the month in which he or she ceases to be disabled for purposes of such paragraph (iii) and does not meet the qualifications set forth in clause (A) or (B) of such paragraph (iii), whichever first occurs. A child whose entitlement to an annuity under paragraph (iii) of section 2(d)(1) terminated by reason of clause (E) of this subdivision because he or she ceased to be disabled and who again becomes disabled as provided in clause (C) of such paragraph (iii), may become reentitled to an annuity on the basis of such disability upon his or her application for such reentitlement. A child whose entitlement to an annuity under paragraph (iii) of section 2(d)(1) terminated with the month preceding the month in which he or she attained age 18, or with a subsequent month, may again become entitled to such an annuity (providing no event to disqualify the child has occurred) beginning with the first month thereafter in which he or she meets the qualifications set forth in clause (B) or

(C) of such paragraph (iii), if he or she has filed an application for such reentitlement.

(8) The entitlement of a parent of a deceased employee to an annuity under paragraph (iv) of section 2(d)(1) shall end on the last day of the month preceding the month in which (A) such parent dies or (B) such parent remarries after the employee's death, whichever first occurs.

(9) No annuity shall accrue with respect to the calendar month in which an annuitant dies. In cases where an individual entitled to an annuity under this Act disappears, no annuity shall accrue to that individual with respect to any month until and unless such individual is shown, by evidence satisfactory to the Board, to have continued in life throughout such month, but—

(A) where an annuity would accrue for such month under section 2(a)(1) to an individual who had a current connection with the railroad industry at the time of such individual's disappearance, and under section 2(c) to such individual's spouse, had such individual been shown to be alive during such month, such individual shall be deemed, for the purposes of benefits under section 2(d), to have died in the month in which such individual disappeared, and where an annuity would accrue for such month under section 2(a)(1) to an individual who did not have a current connection with the railroad industry at the time of such individual's disappearance, and under section 2(c) to such individual's spouse, had such individual been shown to be alive during such month, such individual shall be deemed, for purposes of benefits payable under section 2(c), to be alive during such month unless the death of such individual has been established or the annuity of the spouse of such individual is otherwise terminated under subsection (c)(3) of this section, and

(B) if such individual is later determined to have been alive during any of such months, recovery of any benefits paid on the basis of such individual's compensation under section 2(d) for the months in which such individual was not known to be alive, minus the total of the amounts that would have been paid as a spouse's annuity during such months (treating the application for a widow's or widower's annuity as an application for a spouse's annuity), shall be made in accordance with section 10.

For purposes of the payment of benefits under this Act, the death of an individual shall be presumed based on such individual's unexplained absence of not less than seven years, except that whenever the death of an individual is so established, such individual shall be deemed to have died in the month in which such individual disappeared.

(45 U.S.C. 231d)

LUMP-SUM PAYMENTS

SEC. 6. (a)(1) Annuities under section 2(a)(1) and supplemental annuities under section 2(b) which will have become due an individual but will not have been paid at the time of such individual's death shall be payable to the person, if any, who is determined by

the Board to be such individual's widow or widower and to have been living with such individual at the time of such individual's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of such individual, and to the extent that he or they will not have been reimbursed under subsection (b) of this section for having paid such expenses. If there be no person or persons so entitled, or if the total of such annuities exceeds the amount payable under this subdivision to such person or persons, such total, or the remainder thereof, as the case may be, shall be paid to the children, grandchildren, parents, or brothers and sisters of the deceased individual in the same manner as if such annuities were a lump sum payable under subsection (c)(1) of this section.

(2) Annuities under section 2(d) which will have become due a survivor of an employee but will not have been paid at the time of such survivor's death shall be payable to the person, if any, who is determined by the Board to be such employee's widow or widower and to have been living with such employee at the time of the employee's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to the children, grandchildren, parents, or brothers and sisters of the deceased employee in the same manner as if such unpaid annuities were a lump sum payable under subsection (c)(1) of this section.

(3) Annuities under section 2(c) which will have become due a spouse or divorced wife of an individual but which will not have been paid at the time of such spouse's or divorced wife's death shall be payable to the individual from whose employment such annuities derived and who will not have died before receiving payment of such annuities. If there be no such individual, such annuities shall be paid as provided in the last two sentences of subdivision (1) of the subsection as if such annuities were annuities due to an individual but unpaid at the time of such individual's death.

(4) Applications for accrued and unpaid annuities provided for in the preceeding subdivisions of this subsection shall be filed prior to the expiration of two years after the death of the person to whom such annuities were originally due.

(5) If there is no person to whom all or any part of the payments described in subdivision (1), (2), or (3) can be made, such payment or part thereof shall escheat to the credit of the Railroad Retirement Account.

(6) For the purposes of this subsection and subsection (c) of this section, a widow or widower of an individual shall be deemed to have been living with the individual at the time of the individual's death if the applicable conditions set forth in section 216(h)(2) or (3) of the Social Security Act, as in effect before 1957, are fulfilled.

(7) In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the widow, widower, child, or parent of an employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be

applied. In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the grandchild, brother, or sister of an employee as claimed, the Board shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such employee was domiciled at the time of his death, or if such employee was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking personal property as a grandchild, brother, or sister shall be deemed such.

(b)(1) Upon the death of an individual who will have completed ten years of service prior to January 1, 1975, and will have had a current connection with the railroad industry at the time of his death, a lump-sum payment shall be made in accordance with the provisions of section 5(f)(1) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, in an amount, if any, which would have been payable under such section 5(f)(1) on the basis of (A) the individual's compensation after December 31, 1936, and prior to January 1, 1975, and (B) the individual's wages (as defined in section 209 of the Social Security Act) prior to January 1, 1975. Any lump sum payable under this subdivision shall be in an amount computed as if the individual had died on January 1, 1975. No lump sum shall be payable under this subdivision if the employee died leaving a surviving divorced wife who would on proper application therefore be entitled to receive an annuity under section 2(d) of this Act for the month in which the employee's death occurred.

(2) Upon the death of an individual who will not have completed ten years of service prior to January 1, 1975, but who (i) will have completed ten years of service at the time of his death (ii) will have had a current connection with the railroad industry at the time of his death, and (iii) will have died leaving no widow surviving divorced wife, widower, child, or parent who would on proper application therefore be entitled to receive an annuity under section 2(d) of this Act for the month in which such death occurred, a lump-sum death payment shall be made in accordance with the provisions of section 202(i) of the Social Security Act in an amount equal to the amount which would have been payable under such section 202(i) if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act. If a lump sum would be payable to a widow or widower under this subdivision except for the fact that a survivor will have been entitled to receive an annuity for the month in which the individual will have died, but within one year after the individual's death there will not have accrued to survivors of the individual, by reason of his death, annuities which, after all deductions pursuant to sections 2(g) and 2(h) of this Act, are equal to such lump sum, a payment equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions shall then nevertheless be made under this subdivision to the widow or widower to whom a lump sum would have been payable under this subdivision except for the fact that a monthly benefit under section 2(d) of this Act was payable for the month in which

the individual dies, if such widow or widower will not have died before receiving payment of such lump sum.

(c)(1) Whenever it shall appear, with respect to the death of an employee, that no benefits, or no further benefits (other than benefits payable to a widow, widower, or parent under either this Act or the Social Security Act upon attaining the age of eligibility therefor at a future date) will be payable under this Act or under the Social Security Act, a lump sum in an amount computed under subdivision (2) of this subsection shall be paid to such person or persons as the deceased employee may have designated by a writing filed with the Board prior to his or her death, or if there be no designation, to the following person (or, if more than one, in equal shares to the persons) whose relationship to the decreased employee will have been determined by the Board and who will not have died before receiving payment of the lump sum provided for in this subdivision—

(i) the widow or widower of the deceased employee who was living with such employee at the time of such employee's death; or

(ii) if there be no such widow or widower, to any child or children of such employee; or

(iii) if there be no such widow, widower, or child, to any grandchild or grandchildren of such employee; or

(iv) if there be no such widow, widower, child, or grandchild, to any parent or parents of such employee; or

(v) if there be no such widow, widower, child, grandchild, or parent, to any brother or sister of such employee; or

(vi) if there be no such widow, widower, child, grandchild, parent, brother, or sister, to the estate of such employee:

Provided, however, That if the employee is survived by a widow, widower, or parent who may upon attaining the age of eligibility be entitled to benefits under this Act or under the Social Security Act, such lump sum shall not be paid unless such widow, widower, or parent makes and files with the Board an irrevocable election, in such form as the Board may prescribe, to have such lump sum be paid in lieu of all benefits to which such widow, widower, or parent might otherwise become entitled under this Act on the basis of the deceased employee's compensation and years of service or under the Social Security Act on the basis of the decreased employee's wages from (A) employment with an employer as defined in section 1(a) of this Act or (B) service as an employee representative as defined in section 1(c) of this Act. Any election made and filed by a widow, widower, or parent pursuant to this subdivision shall be legally effective according to its terms. After a lump sum with respect to the death of an employee is paid pursuant to an election filed with the Board under the provisions of this subsection, no further benefits shall be paid (other than to a survivor in the circumstances described in paragraph (3)) under this Act or the Social Security Act on the basis of such employee's compensation and service under this Act, except that nothing in this Act or the Social Security Act shall operate to deprive a widow, widower, or parent making such election of any insurance benefit under title II of the Social Security Act to which such individual would have been enti-

tled if the employee had not rendered service as an employee under this Act.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to (A) the sum of 4 per centum of the deceased employee's compensation paid after December 31, 1936, and prior to January 1, 1947, plus 7 per centum of such employee's compensation paid after December 31, 1946, and before January 1, 1959, plus 7½ per centum of such employee's compensation paid after December 31, 1958, and before January 1, 1962, plus 8 per centum of such employee's compensation paid after December 31, 1961, and before January 1, 1966, plus an amount equal to the total of all employee taxes payable by such employee after December 31, 1965, and before January 1, 1975, under the provisions of section 3201 of the Railroad Retirement Tax Act (excluding, for this purpose, the amount of the employee tax attributable to that portion of the tax rate derived from section 3101(b) of the Internal Revenue Code of 1954), plus one-half of 1 per centum of the compensation on which such taxes were payable, deeming the compensation attributable to creditable military service after June 30, 1963, and before January 1, 1975, to be taxable compensation, and one-half of the taxes payable by an employee representative under section 3211 of the Railroad Retirement Tax Act to be employee taxes under section 3201 of such Act, minus (B) the sum of all benefits paid to such employee, and to others deriving from such employee, during his or her life, or to others by reason of his or her death, under this Act, the Railroad Retirement Act of 1937, or the Social Security Act (excluding, for this purpose, payments to providers of services under section 7(d) of this Act or section 21 of the Railroad Retirement Act of 1937, any supplemental annuity payments made to the employee under section 2(b) of this Act or section 3(j) of the Railroad Retirement Act of 1937, any amounts by which that portion of the annuities provided the employee under section 3(a) of this Act or his spouse or divorced wife under section 4(a) of this Act were increased by reason of the employee's wages and self-employment income derived from employment and self-employment under the Social Security Act, that portion of the annuities provided the employee under section 3(h) of this Act or his spouse under section 4(e) of this Act, and so much of the benefits paid to the employee and to others deriving from him or her under the Social Security Act during his or her lifetime as would have been payable under that Act if such employee had not rendered service as an employee as defined in section 1(b) of this Act). In computing compensation for purposes of this subdivision there shall be excluded compensation in excess of $300 for any month before July 1, 1954; compensation in excess of $350 for any month after June 30, 1954, and before June 1, 1959; compensation in excess of $400 for any month after May 31, 1959, and before November 1, 1963; compensation in excess of $450 for any month after October 31, 1963, and before October 1, 1965; and compensation in excess of (i) $450 or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, which ever is greater, for any month after September 30, 1965.

(3) Notwithstanding the last sentence of paragraph (1), benefits shall be paid to a survivor who—

(A) is a divorced wife; and

(B) through administrative error received benefits otherwise precluded by the making of a lump sum payment under this section to a widow;

if that divorced wife makes an election to repay to the Board the lump sum payment. The Board may withhold up to 10 percent of each benefit amount paid after the date of the enactment of this paragraph toward such reimbursement. The Board may waive such repayment to the extent the Board determines it would cause an unjust financial hardship for the beneficiary.

(d)(1) Every individual who will have completed ten years of service at the time of his retirement or death, but does not meet the qualifications for an annuity amount determined under the provisions of section 3(h)(1) or 3(h)(2) of this Act, shall, at the time his annuity under section 2(a)(1) begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 2(a)(1) of this Act, or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to the sum of (A) 1.5 per centum of so much of such individual's combined earnings for any calendar year after 1950 and before 1954 as is in excess of $3,600, plus (B) 2 per centum of so much of such individual's combined earnings for any calendar year after 1953 and before 1957 as is in excess of $4,200 plus (C) 2.25 per centum of so much of such individual's combined earnings for any calendar year after 1956 and before 1959 as is in excess of $4,200 plus (D) 2.5 per centum of so much of such individual's combined earnings for the calendar year 1959 as is in excess of $4,800 plus (E) 3 per centum of so much of such individual's combined earnings for each of the calendar years 1960 and 1961 as is in excess of $4,800, plus (F) 3.125 per centum of so much of such individual's combined earnings for the calendar year 1962 as is in excess of $4,800, plus (G) 3.625 per centum of so much of such individual's combined earnings for any calendar year after 1962 and before 1966 as is in excess of $5,400, plus (H) 4.2 per centum of so much of such individual's combined earnings for the calendar year 1966 as is in excess of $6,600, plus (I) 4.4 per centum of so much of such individual's combined earnings for the calendar year 1967 as is in excess of $6,600, plus (J) 3.8 per centum of so much of such individual's combined earnings for the calendar year 1968 as is in excess of $7,800, plus (K) 4.2 per centum of so much of such individual's combined earnings for

each of the calendar years 1969 and 1970 as is in excess of $7,800, plus (L) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1971 as is in excess of $7,800, plus (M) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1972 as is in excess of $9,000, plus (N) 4.85 per centum of so much of such individual's combined earnings for the calendar year 1973 as is in excess of $10,800, plus (O) 4.95 per centum of so much of such individual's combined earnings for the calendar year 1974 as is in excess of $13,200. For purposes of this subsection, the term "combined earnings" shall include "compensation" as defined in section 1(h) of the Railroad Retirement Act of 1937, "wages" as defined in section 209 of the Social Security Act, and "self-employment" income as defined in section 211(b) of the Social Security Act.

(e)(1) Every individual who will have completed ten years of service at the time of his retirement or death, who will have received compensation in the nature of separation of severance pay on or after January 1, 1985, and who would have been credited with additional months of service pursuant to section 3(i)(4) of this Act except for the fact that such individual was not in an employment relation to one or more employers nor an employee representative in such months, shall, at the time his annuity under section 2(a)(1) of this Act begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If the full amount of a lump sum under this subsection cannot be determined at the time an individual's annuity under sectin 2(a)(1) begins to accure, such lump sum shall be payable at such time thereafter as such amount can be determined. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 2(a)(1), or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

(2) The lump sum provided under subdivision (l)[1] of this subsection shall be in an amount equal to the product of (A) the compensation attributable to the additional months of service which would have been credited to the individual due to the receipt of payments in the nature of separation or severance pay pursuant to section 3(i)(4) of this Act if such individual had remained in an employment relation to one or more employers or had continued to be an employee representative and (B) the rate of tax, or rates of tax, imposed on the compensation described in clause (A) of this subdivision by section 3201(b) of the Internal Revenue Code of 1986.

(45 U.S.C. 231e)

[1]So in original. Probably should be subdivision "(1)".

POWERS AND DUTIES OF THE BOARD

SEC. 7. (a) This Act shall be administered by the Railroad Retirement Board established by the Railroad Retirement Act of 1937 as an independent agency in the executive branch of the Government and composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term and any member holding office pursuant to appointment under the Railroad Retirement Act of 1937 when this Act becomes effective shall hold office until the term for which he was appointed under such Railroad Retirement Act of 1937 expires. One member shall be appointed from recommendations made by representatives of the employees and one member shall be appointed from recommendations made by representatives of employers as defined in paragraph (i) of section 1(a)(1) of this Act, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and employers concerned. One member, who shall be the chairman of the Board, shall be appointed without recommendation by either employers or employees and shall not be in the employment of or be pecuniarily or otherwise interested in any employer or organization of employees. Vacancies in the Board shall not impair the powers or affect the duties of the Board or of the remaining members of the Board, of whom a majority of those in office shall constitute a quorum for the transaction of business. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

(b)(1) The Board shall have and exercise all the duties and powers necessary to administer this Act. The Board shall take such steps as may be necessary to enforce such Act and make awards and certify payments. Decisions by the Board upon issues of law and fact relating to annuities or death benefits shall not be subject to review by any other administrative or accounting officer, agent, or employee of the United States.

(2) In the case of—

(A) an individual who will have completed ten years of service creditable under this Act,

(B) the wife or divorced wife or husband of such an individual,

(C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of this Act, and

(D) any other person entitled to benefits under title II of the Social Security Act on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry at the time of his death),

the Board shall provide for the payment on behalf of the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust

Fund and the Federal Disability Insurance Trust Fund of monthly benefits payable under title II of the Social Security Act which are certified by the Secretary to it for payment under the provisions of title II of the Social Security Act.

(3) If the Board finds that an applicant is entitled to an annuity or death benefit under the provisions of this Act then the Board shall make an award fixing the amount of the annuity or benefit, as the case may be, and shall certify the payment thereof as hereinafter provided; otherwise the application shall be denied. For purposes of this section, the Board shall have and exercise such of the powers, duties and remedies provided in subsection (a), (b), (d), and (n) of section 12 of the Railroad Unemployment Insurance Act as are not inconsistent with the express provisions of this Act. The Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by the Act, excluding only the power to prescribe rules and regulations, including the power to make decisions on applications for annuities or other benefits: *Provided, however,* That any person aggrieved by a decision on his application for an annuity or other benefit shall have the right to appeal to the Board. Notice of a decision of the Board, or of an employee thereof, shall be communicated to the applicant in writing within thirty days after such decision shall have been made.

(4) The Board shall from time to time certify to the Secretary of the Treasury the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursements of the Treasury Department, and prior to audit by the General Accounting Office, shall make payment in accordance with the certification by the Board.

(5) The Board shall establish and promulgate rules and regulations to provide for the adjustment of all controversial matters arising in the administration of this Act. All rules, regulations, or decisions of the Board shall require the approval of at least two members, and they shall be entered upon the records of the Board, which shall be a public record.

(6) The Board shall gather, keep, compile, and publish in convenient form such records and data as may be necessary to assure proper administration of this Act, including subdivision (2) of this subsection. The Board shall have power to require all employers and employees and any officer, board, commission, or other agency of the United States to furnish such information and records as shall be necessary for the administration of this Act, including subdivision (2) of this subsection. The several district courts of the United States and the District Court of the United States for the District of Columbia shall have jurisdiction upon suit by the Board to compel obedience to any order of the Board issued pursuant to this section. The orders, writs, and processes of the District Court of the United States for the District of Columbia in such suits may run and be served anywhere in the United States. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. The Board shall make an annual report to the President of the United States to be submitted to Congress.

(7) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this Act, the Railroad Unemployment Insurance Act,,[1] the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act. The Board shall furnish the Secretary of Health, Education, and Welfare certified reports of records of compensation and periods of service reported to it pursuant to section 9 of this Act, of determinations under section 2 of this Act, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act as affected by section 18 of this Act. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided, however,* That if the Board or the Secretary of Health, Education, and Welfare receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health, Education, and Welfare, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

(8) Any department or agency of the United States maintaining records of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the number of months of military service which such department or agency finds the individual to have had during any period or periods with respect to which the Board's request is made, the date and manner of entry into such military service, and the conditions under which such service was continued. Any department or agency of the United States which is authorized to make awards of pensions, disability compensation, or any other gratuitous benefits or allowances payable, on a periodic basis or otherwise, under any other Act of Congress on the basis of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the calendar months for all or part of which any such pension, compensation, benefit, or allowance is payable to, or with respect to, the individual, the amounts of any such pension, compensation, benefit, or allowance, and the military service on which such pension, compensation, benefit, or allowance is based. Any certification made pursuant to the provisions of this subdivision shall be conclusive on the Board: *Provided, however,* That if evidence inconsistent with any such certification is submitted, and the claim is in the course of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be

[1] So in original.

conclusive, made in the same manner, and subject to the same conditions as an original certification.

(9) The Board shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ such individual and provide for their compensation and expenses as may be necessary for the proper discharge of its functions. All positions to which such individuals are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed, or excepted therefrom. In the employment of such individuals under the civil service laws and rules the Board shall give preference over all others to individuals who have had experience in railroad service, if, in the judgment of the Board, they possess the qualifications necessary for the proper discharge of the duties of the positions to which they are to be appointed. For purposes of its administration of this Act or the Railroad Unemployment Insurance Act, or both, the Board may place, without regard to the numerical limitations contained in section 505 of the Classification Act of 1949, as amended, four positions in grade GS–16 of the General Schedule established by that Act, four positions in grade GS–17 of such schedule, and one position in grade GS–18 of such schedule.

(c)(1) Benefit payments determined by the Board to be payable under this Act shall be made from the Railroad Retirement Account, except that payments of supplemental annuities under section 2(b) of this Act shall be made from the Railroad Retirement Supplemental Account, and payments of annuity amounts made under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 shall be made from the Dual Benefits Payments Account. In any fiscal year, the total amounts paid under such sections shall not exceed the total sums appropriated to the Dual Benefits Payments Account for that fiscal year. The Board shall prescribe regulations for allocation of annuity amounts which would without regard to such regulations be payable under sections 3(h), 4(e), and 4(h) of this Act and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 so that the sums appropriated to the Dual Benefits Payments Account for a fiscal year so far as practicable, are expended in equal monthly installments throughout such fiscal year, and are distributed so that recipients are paid annuity amounts which bear the same ratio to the annuity amounts such recipients would have received but for such regulations as the ratio of the total sums appropriated to pay such annuity amounts bear to the total sums necessary to pay such annuity amounts without regard to such regulations. Notwithstanding any other provision of law, the entitlement of an individual to an annuity amount under section 3(h), 4(e), or 4(h) of this Act or section 204(a)(3), 204(a)(4), 206(3), or 207(3) of Public Law 93–445 for any month in which the amount payable to such individual is allocated under the regulations prescribed by the Board under this subsection shall not exceed the amount so allocated for that month to such individual.

(2) At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board and the Secretary of Health, Education, and Welfare shall determine the amounts, if any, which if added to or subtracted from the Federal Old-Age and Survivors

Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would place each such Trust Fund in the same position in which it would have been if (A) service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act and in the Federal Insurance Contributions Act and (B) this Act had not been enacted. Such determination with respect to each such Trust Fund shall be made no later than June 15 following the close of the fiscal year. If, pursuant to any such determination, any amount is to be added to any such Trust Fund, the Board shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from the Railroad Retirement Account to such Trust Fund. If, pursuant to any such determination, any amount is to be subtracted from any such Trust Fund, the Secretary of Health, Education, and Welfare shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from such Trust Fund to the Railroad Retirement Account. Any amount so certified shall further include interest (at the rate determined in subdivision (3) for the fiscal year under consideration) payable from the close of such fiscal year until the date of certification. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust or to any such Trust Fund from the Railroad Retirement Account, as the case may be, such amounts as, from time to time, may be determined by the Board and the Secretary of Health, Education, and Welfare pursuant to the provisions of this subdivision and certified by the Board or the Secretary of Health, Education, and Welfare for transfer from any such Trust Fund or from the Railroad Retirement Account.

(3) For purposes of subdivision (2), for any fiscal year, the rate of interest to be used shall be equal to the average rate of interest computed as of May 31 preceding the close of such fiscal year, borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) After the end of each month beginning with the month of October 1983, the Board shall determine the net amount, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would, with respect to such month, place those Trust Funds, taken as a whole, in the same position in which they would have been if (A) service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act and in the Federal Insurance Contributions Act, and (B) this Act had not been enacted. If for any month the net amount so determined would be subtracted from those Trust Funds, the Board shall, within ten days after the end of such month, report such amount to the Secretary of the Treasury for transfer from the general fund to the Railroad Retirement Account. Any amount so reported shall

further include interest (at an annual rate equal to the rate of interest borne by a special obligation issued to the Railroad Retirement Account in the month in which the transfer is made to the Account) payable from the close of the month for which the transfer is made until the date of transfer. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subdivision and reported by the Board for transfer. For such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after the date of the enactment of this Act under section 3102 of title 31 of the United States Code, and the purpose for which securities may be issued under section 3102 of title 31 of the United States Code are extended to include such purpose. Each such transfer shall be made by the Secretary of the Treasury within five days after a report of the amount to be transferred is received. Not later than December 31 following the close of each fiscal year beginning with the fiscal year ending September 30, 1984, the Board shall certify to the Secretary of the Treasury the total of all amounts transferred pursuant to the provisions of this subdivision for months in such fiscal year. Within ten days after a transfer, or transfers, pursuant to subdivision (2) for a particular fiscal year, the Board shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Account to the general fund an amount equal to (A) the total of all amounts, exclusive of interest, transferred to such Account pursuant to the provisions of this subdivision for months in such fiscal year, plus (B) interest (at the rate determined in subdivision (3) for such fiscal year) payable with respect to each amount transferred for a month during such fiscal year from the close of the month for which the transfer of the amount was made until the date of retransfer of such amount. The Secretary of the Treasury is authorized and directed to retransfer from the Railroad Retirement Account to the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of the preceding sentence of this subdivision and reported by the Board for retransfer.

(d)(1) The Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, home health services, hospice care, and outpatient hospital diagnostic services (all hereinafter referred to as "services") under section 226, and parts A and C of title XVIII, of the Social Security Act as the Secretary of Health, Education, and Welfare has under such section and such parts with respect to individuals to whom such sections and such parts apply. For purposes of section 8, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

(2) Except as otherwise provided in this subsection, every person who—

(i) has attained age 65 and (A) is entitled to an annuity under this Act or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse or divorced wife, had such spouse's husband or wife ceased compensated service or (C) bears a relationship to an employee which, by reason of section 3(f)(3) of this Act, has been, or would be, taken into account in calculating the amount of the annuity of such employee; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 2 of this Act, or under the Railroad Retirement Act of 1937 and section 2 of this Act, or could have been includable in the computation of an annuity under section 3(f)(3) of this Act, for not less than 24 months and (B) could have been entitled for 24 calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act or under section 202 of that Act on the basis of disability if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act and if an application for disability benefits had been filed,

shall be certified to the Secretary of Health, Education, and Welfare as a qualified railroad retirement beneficiary under section 226 of the Social Security Act.

(3) If an individual entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act would have been insured for disability insurance benefits as determined under section 223(c)(1) of the Social Security Act at the time such annuity began, he shall be deemed, solely for purposes of paragraph (ii) of subdivision (2), to be entitled to a disability insurance benefit under section 223 of the Social Security Act for each month, and beginning with the first month, in which he would meet the requirements for entitlement to such a benefit, other than the requirement of being insured for disability insurance benefits, if service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act and if an application for disability benefits had been filed.

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 and part A of title XVIII of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health, Education, and Welfare were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, 1868, 1869, 1874(b), and 1875 were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under section 7(b), in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada

to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in effect in the place in Canada where such services are furnished. For the purposes of section 10 of this Act, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health, Education, and Welfare shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226, and part A of title XVIII, of the Social Security Act.

(e) The Board is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Railroad Retirement Account, to the Railroad Retirement Supplemental Account, or to the Railroad Unemployment Insurance Account, or to the Board, or any member, officer, or employee thereof, for the benefit of such accounts or any activity financed through such accounts. Any such gifts accepted pursuant to the authority granted in this subsection shall be deposited in the specific account designated by the donor or, if the donor has made no such specific designation, in the Railroad Retirement Account.

(f) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(45 U.S.C. 231f)

COURT JURISDICTION

SEC. 8. Decisions of the Board determining the rights or liabilities of any person under this Act shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act except that the time within which proceedings for the review of a decision with respect to an annuity, supplemental annuity, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant.

(45 U.S.C. 231g)

RETURNS OF COMPENSATION

SEC. 9. Employers shall file with the Board, in such manner and form and at such times as the Board by rules and regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall furnish employees with statements of their compensation as reported to the Board. The Board's record of the compensation so returned shall be conclusive as to the amount of compensation paid to an employee during each period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to have been paid to an employee during a particular period shall be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation returned in the one case, or the failure to make return of the compensation in the other case, is called to the attention of the Board within four years after the day on which return of the compensation was required to be made.

(45 U.S.C. 231h)

ERRONEOUS PAYMENTS

SEC. 10. (a) If the Board finds that at any time more than the correct amount of annuities or other benefits has been paid to any individual under this Act, or payment has been made to an individual not entitled thereto, recovery by adjustment in subsequent payments to which such individual, or any other individual on the basis of the same compensation, wages, or self-employment income, is entitled under this Act, or the Railroad Unemployment Insurance Act may, except as otherwise provided in this section, be made under regulations prescribed by the Board. If the individual to whom more than the correct amount has been paid dies before recovery is completed, recovery may be made by setoff or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act, or the Railroad Unemployment Insurance Act, to the estate of such individual or to any person on the basis of the compensation, wages, or self-employment income of such individual. The Board shall have the authority to recover from any payment which would be made to an individual by the Board under section 7(b)(2) of this Act the amount of annuity payments made to such individual which are erroneous because of such individual's entitlement to monthly insurance benefits under title II of the Social Security Act.

(b) Adjustments under this section may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of annuities or other benefits paid in excees of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case recovery shall be deemed to have been completed upon such recertification.

(c) There shall be no recovery in any case in which more than the correct amount of annuities or other benefits has been paid under this Act to an individual or payment has been made to an

individual not entitled thereto who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of the Act or would be against equity or good conscience.

(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under subsection (c) of this section or has been begun but cannot be completed under subsection (a) of this section.

(45 U.S.C. 231i)

WAIVER OF ANNUITIES

SEC. 11. Any person awarded an annuity under this Act may decline to accept all or any part of such annuity by a waiver signed and filed with the Board. Such a waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. Such a waiver will have no effect on entitlement to, or the amount of, any other annuity or benefit.

(45 U.S.C. 231j)

INCOMPETENCE

SEC. 12. (a) Every individual receiving or claiming benefits, or to whom any right or privilege is extended, under this Act or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall be conclusively presumed to have been competent until the date on which the Board receives written notice, in a form and manner acceptable to the Board, that he is an incompetent, or a minor, for whom a guardian or other person legally vested with the care of his person or estate has been appointed: *Provided, however,* That, regardless of the legal competency or incompetency of an individual entitled to a benefit administered by the Board, the Board may, if it finds the interest of such individual to be served thereby, recognize actions by, and conduct transactions with, and make payments to, such individual, or recognize actions by, and conduct transactions with, and make payments to, a relative or some other person for such individual's use and benefit.

(b) Every guardian or other person legally vested with the care of the person or estate of an incompetent or minor who is receiving or claiming benefits, or to whom any right or privilege is extended, under this Act or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall have power everywhere, in the manner and to the extent prescribed by the Board, but subject to the provisions of the preceding subsection, to take any action necessary or appropriate to perfect any right or exercise any privilege of the incompetent or minor and to conduct all transactions on his behalf under this or any other Act of Congress now or hereafter administered, in whole or in part, by the Board. Any payment made pursuant to the provisions of this sec-

tion shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(45 U.S.C. 231k)

PENALTIES

SEC. 13. (a) Any person who shall knowingly fail or refuse to make any report or furnish any information required by the Board in the administration of this Act, including the provisions of section 7(b)(2) thereof, or who shall knowingly make or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purpose of this Act, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of causing an award or payment to be made, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(b) All fines and penalties imposed by a court pursuant to this Act shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the Railroad Retirement Account.

(45 U.S.C. 231*l*)

EXEMPTION FROM LEGAL PROCESS

SEC. 14. (a) Except as provided in subsection (b) of this section and the Internal Revenue Code of 1954, notwithstanding any other law of the United States, or of any State, territory, or the District of Columbia, no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

(b)(1) This section shall not operate to exclude the amount of any supplemental annuity paid to an individual under section 2(b) of this Act from income taxable pursuant to the Federal income tax provisions of the Internal Revenue Code of 1954.

(2) This section shall not operate to prohibit the characterization or treatment of that portion of an annuity under this Act which is not computed under section 3(a), 4(a), or 4(f) of this Act, or any portion of a supplemental annuity under this Act, as community property for the purposes of, or property subject to, distribution in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree. The Board shall make payments of such portions in accordance with any such characterization or treatment or any such decree or settlement.

(45 U.S.C. 231m)

RAILROAD RETIREMENT ACCOUNT

SEC. 15. (a) The Railroad Retirement Account established by section 15(a) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, to provide for the payment of benefits to be made from such Account in accordance with

the provisions of section 7(c)(1) of this Act, and to provide for expenses necessary for the Board in the administration of all provisions of this Act, an amount equal to amounts covered into the Treasury (minus refunds) during each fiscal year under the Railroad Retirement Tax Act, except those portions of the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of such Tax Act as are necessary to provide sufficient funds to meet the obligation to pay supplemental annuities at the level provided under section 3(e) of this Act and, with respect to those entitled to supplemental annuities under section 205(a) of title II of this Act, at the level provided under section 205(a). The Board is directed to determine what portion of the taxes collected under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act is to be credited to the Railroad Retirement Account pursuant to the preceding provisions of this subsection and what portion of such taxes is to be credited to the Railroad Retirement Supplemental Account pursuant to the provisions of subsection (c) of this section. The Board shall make such a determination with respect to each calendar quarter commencing with the quarter beginning January 1, 1975, shall make each such determination not later than fifteen days before each calendar quarter, and shall, as soon as practicable after each such determination, advise the Secretary of the Treasury of the determination made. The Secretary of the Treasury shall credit the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act to the Railroad Retirement Account and the Railroad Retirement Supplemental Account in such proportions as is determined by the Board pursuant to the provisions of this subsection.

(b) In addition to the amount appropriated in subsection (a) of this section, there is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, such amount as the Board determines to be necessary to meet (A) the additional costs, resulting from the crediting of military service under this Act, of benefits payable under section 2 of this Act, but only to the extent that such Account is not reimbursed for such costs under section 7(c)(2), (B) the additional administrative expenses resulting from the crediting of military service under this Act, and (C) any loss in interest to such Account resulting from the payment of additional benefits based on military service credited under this Act: *Provided, however,* That, in determining the amount to be appropriated to the Railroad Retirement Account for any fiscal year pursuant to the provisions of this subsection, there shall not be considered any costs resulting from the crediting of military service under this Act for which appropriations to such Account have already been made pursuant to section 4(l) of the Railroad Retirement Act of 1937. Any determination as to loss in interest to the Railroad Retirement Account pursuant to clause (C) of the first sentence of this subsection shall take into account interest from the date each annuity based, in part, on military service began to accrue or was increased to the date or dates on which the amount appropriated is credited to the Account. The cost resulting from the payment of additional benefits under this Act based on military service determined pursuant to the preceding provisions of this subsection shall be adjusted

by applying thereto the ratio of the total net level cost of all benefits under this Act to the portion of such net level cost remaining after the exclusion of administrative expenses and interest charges on the unfunded accrued liability as determined under the last completed actuarial valuation pursuant to the provisions of subsection (g) of this section. At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board shall, as promptly as practicable, determine the amount to be appropriated to the Account pursuant to the provisions of this subsection, and shall certify such amount to the Secretary of the Treasury for transfer from the general fund in the Treasury to the Railroad Retirment Account. When authorized by an appropriation Act, the Secretary of the Treasury shall transfer to the Railroad Retirement Account from the general fund in the Treasury such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subsection and certified by the Board for transfer to such Account. In any determination made pursuant to section 7(c)(2) of this Act, no further charges shall be made against the Trust Funds established by title II of the Social Security Act for military service rendered before January 1, 1957, and with respect to which appropriations authorized by clause (2) of the first sentence of section 4(l) of the Railroad Retirement Act of 1937 shall have been credited to the Railroad Retirement Account, but the additional benefit payments incurred by such Trust Funds by reason of such military service shall be taken in account in making any such determination.

(c) The Railroad Retirement Supplemental Account established by section 15(b) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such account for each fiscal year, beginning with the fiscal year ending June 30, 1975, out of any moneys in the Treasury not otherwise appropriated, to provide for the payment of supplemental annuities under section 2(b) of this Act, and to provide for the expenses necessary for the Board in the administration of the payment of such supplemental annuities, an amount equal to such portions of the amounts covered into the Treasury (minus refunds) during each fiscal year under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act as are not appropriated to the Railroad Retirement Account pursuant to the provisions of subsection (a) of this section. Whenever the Board finds at any time that the balance in the Railroad Retirement Supplemental Account will be insufficient to pay the supplemental annuities which it estimates are due, or will become due, under section 2(b) of this Act, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Railroad Retirement Supplemental Account such moneys as the Board estimates would be necessary for the payment of such supplemental annuities, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the Railroad Retirement Supplemental Account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such supplemental annuities, it shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Supplemental Account to the credit of the Railroad Retirement Account

such moneys as in its judgment are not needed for the payment of such supplemental annuities, plus interest at an annual rate equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eight of 1 per centum, and the Secretary shall make such retransfer.

(d)(1) There is hereby created an account in the Treasury of the United States to be known as the Dual Benefits Payments Account. There is hereby authorized to be appropriated to such account for each fiscal year beginning with the fiscal year ending September 30, 1982, such sums as are necessary to pay during such fiscal year the amounts of annuities estimated by the Board to be paid under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445. Not more than 30 days prior to each fiscal year beginning with the fiscal year ending September 30, 1982, the Board may request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Dual Benefits Payments Account any amount not exceeding the amount that the Board estimates will be necessary to pay on the first day of the next succeeding month the annuity amounts under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445, taking into account any reduction in such annuity amounts as determined under section 7(c)(1) of this Act, and the Secretary of the Treasury shall make such transfer, but at no time shall the total amount of money outstanding to the Dual Benefits Payments Account from the Railroad Retirement Account exceed the amount necessary to pay the annuity amounts under sections 3(h), 4(e), and 4(h) of this Act and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 for one month. Not more than 10 days after the funds appropriated to the Dual Benefits Payments Account for each such fiscal year are received into such Account, the Board shall request the Secretary of the Treasury to retransfer from the Dual Benefits Payments Account to the credit of the Railroad Retirement Account an amount equal to the amount transferred to the Dual Benefits Payments Account prior to or during such fiscal year under the preceding sentence, together with such additional amount determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such transfer, and the Secretary of the Treasury shall make such retransfer.

(2) The Secretary of the Treasury—

(i) shall transfer from the general fund as a loan to the Board on January 1, 1984, one-third of the special amount described in subdivision (3) of this subsection;

(ii) shall transfer from the general fund as a loan to the Board on January 1, 1985, one-third of the special amount described in subdivision (3) of this subsection, plus an amount equal to the interest that one-third would have earned had it been in the Railroad Retirement Account since January 1, 1984; and

(iii) shall transfer from the general fund as a loan to the Board on January 1, 1986, the final one-third of the special amount described in subdivision (3) of this subsection, plus an

amount equal to the interest that one-third would have earned had it been in the Railroad Retirement Account since January 1, 1984.

(3) The special amount referred to in subdivision (2) of this subsection is the amount which, as of January 1, 1984, would place the Railroad Retirement Account in the same position it would have been on that date if not annuity amounts had been paid during the period beginning January 1, 1975 and ending September 30, 1981, under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 983–445, and no sums had been appropriated as authorized in section 15(d) of this Act.

(4) For the purposes of subdivision (2) of this subsection, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after the date of the enactment of the Railroad Retirement Solvency Act of 1983 under section 3102 of title 31 of the United States Code and the purposes for which securities may be so issued are extended to include such purposes.

(5) The amounts transferred to the Board as loans under subdivision (2) of this subsection shall be deposited in the Railroad Retirement Account.

(6) The amounts transferred as loans under subdivision (2) of this subsection shall be repaid to the general fund to the extent sums are appropriated for that purpose, and there are hereby authorized to be appropriated, in addition to any other sums authorized to be appropriated for the purposes of this Act and from any sums in the Treasury not otherwise appropriated, such sums as may be necessary to make such repayments.

(e) At the request and direction of the Board, it shall be the duty of the Secretary of the Treasury (hereinafter referred to as the "Secretary") to invest such portion of the amounts credited to the Railroad Retirement Account, the Dual Benefits Payments Account and the Railroad Retirement Supplemental Account as, in the judgment of the Board, is not immediately required for the payment of annuities, supplemental annuities, and death benefits. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (A) on original issue at the issue price; or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the accounts. Such obligations issued for purchase by the accounts shall have maturities fixed with due regard for the needs of the accounts, and shall bear interest at a rate equal to the average market yield, computed as of the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing notes of the United States then forming a part of the public debt that are not due or callable until after the expiration of three years from the end of such calendar month, except that where such rate is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-

eighth of 1 per centum nearest such rate: *Provided,* That the rate of interest on such obligations shall in no case be less than 3 per centum per annum. At the request of the Board the Secretary shall purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, or other obligations which are lawful investments for trust funds of the United States, on original issue or at the market price: *Provided,* That the interest yield of such obligations shall not be less than the interest rate determined in accordance with the preceding sentence. At the request of the Board, the Secretary shall sell at the market price such obligations in the accounts (other than special obligations issued exclusively to the accounts) as the Board designates. The Board shall from time to time request the Secretary to redeem such special obligations issued exclusively to the accounts as the Board designates and upon such request the Secretary shall redeem such obligations at par plus accrued interest. All requests of the Board to the Secretary, provided for in this subsection, shall be mandatory upon the Secretary. It shall be the duty of the Board to determine at all times what proportion of the accounts shall be invested in other than special obligations issued to the accounts and further to determine which of such obligations available to the accounts consistent with the foregoing requirements will provide the greatest rate of return on the funds invested.

(f) The Board is hereby authorized and directed to select two actuaries, one from recommendations made by representatives of employees and the other from recommendations made by representatives of employers as defined in paragraph (i) of section 1(a)(1) of this Act. These actuaries, along with a third who shall be designated by the Secretary of the Treasury, shall be known as the Actuarial Advisory Committee with respect to the Railroad Retirement Account. The actuaries so selected shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension plans: *Provided, however,* That these requirements shall not apply to any actuary who served as a member of the Committee prior to January 1, 1975. The Committee shall examine the actuarial reports and estimates made by the Board and shall have authority to recommend to the Board such changes in actuarial methods as they may deem necessary. The compensation of the members of the Committee, exclusive of the member designated by the Secretary, shall be fixed by the Board on a per diem basis.

(g) The Board shall include in its annual report a statement of the status and the operations of the Railroad Retirement and Railroad Retirement Supplemental Accounts, and the Dual Benefits Payments Account. At intervals not longer than three years the Board shall make an estimate of the liabilities created by this Act and shall include such estimate in its annual report.

(h) There are hereby authorized to be appropriated from time to time such sums as may be necessary to provide for the expenses of the Board in administering the provisions of this Act.

(i)(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits

under this Act that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each account established in the Treasury for the payment of benefits under this Act for the proportionate amount of benefit checks (including interest thereon) drawn on each such Account more than six months previously but not presented for payment and not previously credited to such Account, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount of the appropriate portion thereof has been previously credited pursuant to paragraph (2) to an Account or Accounts, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, recharge such Account or Accounts for the amount of such check attributable to such Account or Accounts and notify the Board.

(4) A benefit check bearing the current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.

(45 U.S.C. 231n)

SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT

SEC. 15A. (a) There is hereby created an account in the Treasury of the United States to be known as the "Social Security Equivalent Benefit Account".

(b) TRANSFERS, ETC, TO SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT.—

(1) NET TIER 1 TAXES, ETC.—There is hereby appropriated to the Social Security Equivalent Benefit Account for each fiscal year, beginning with the fiscal year beginning October 1, 1984, an amount equal to the sum of the following amounts:

(A) NET TIER 1 TAXES.—Amounts covered into the Treasury (minus refunds) during such fiscal year under sections 3201(a), 3211(a)(1), and 3221(a) of the Railroad Retirement Tax Act.

(B) INCOME TAX LIABILITIES ATTRIBUTABLE TO TAXATION OF SOCIAL SECURITY EQUIVALENT BENEFITS.—The amount which (but for this section) would have been transferred to the Railroad Retirement Account under section 121(e) of the Social Security Amendments of 1983 to the extent that the amount which would have been so transferred is attributable to taxation of social security equivalent benefits.

Amounts appropriated to the Railroad Retirement Account shall be appropriately reduced to take into account the amounts appropriated under this paragraph to the Social Security Equivalent Benefit Account.

(2) FINANCIAL INTERCHANGE AMOUNTS.—On and after October 1, 1984, any amount which (but for this section) would have been transferred to the Railroad Retirement Account pursuant to paragraph (2) or (4) of section 7(c) of this Act shall

be transferred to the Social Security Equivalent Benefit Account. On and after October 1, 1984, no transfer shall be made to the Railroad Retirement Account pursuant to paragraph (2) or (4) of section 7(c) of this Act.

(3) CERTAIN CREDITED MILITARY SERVICE AMOUNTS.—To the extent that the authorization for appropriation contained in section 15(b) is attributable to the cost of social security equivalent benefits, on and after October 1, 1984, any reference in such section to the Railroad Retirement Account shall be treated as a reference to the Social Security Equivalent Benefit Account.

(4) TIME AND MANNER OF CREDITS AND TRANSFERS.—Amounts appropriated or transferred to the Social Security Equivalent Benefit Account under this section shall be credited or transferred to such Account at the same time and in the same manner as such amounts would have been credited or transferred to the Railroad Retirement Account but for this section.

(c)(1) Except as otherwise provided in this section, amounts in the Social Security Equivalent Benefit Account shall be available only for purposes of paying social security equivalent benefits under this Act and to provide for the administrative expenses of the Board allocable to social security equivalent benefits.

(2) On and after October 1, 1984, any transfer which (but for this paragraph) would be required to be made from the Railroad Retirement Account under paragraph (2) or (4) of section 7(c) shall be made from the Social Security Equivalent Benefit Account.

(d)(1) Whenever the Board finds that the balance in the Social Security Equivalent Benefit Account will be insufficient to pay social security equivalent benefits which it estimates are due in any month, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Social Security Equivalent Benefit Account such moneys as the Board estimates will be necessary for the payment of such benefits, and the Secretary shall make such transfer. Whenever later in such month there is a transfer to the Social Security Equivalent Benefit Account under paragraph (2) or (4) of section 7(c) of this Act, the amount so transferred shall be immediately retransferred to the Railroad Retirement Account. The amount retransferred under the preceding sentence shall not exceed the amount of any outstanding transfers under this paragraph from the Railroad Retirement Account plus such additional amounts determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such outstanding transfers.

(2) Whenever the Board determines that—

(A) amounts in the Railroad Retirement Account will not be sufficient to pay the annuities which it estimates are due, or will become due, from such Account, and

(B) the transfer under this paragraph will not jeopardize the present or future payment of social security equivalent benefits,

the Board shall request the Secretary of the Treasury to transfer from the Social Security Equivalent Benefit Account to the Railroad Retirement Account such moneys as the Board estimates will

be necessary for the payment of such annuities, and the Secretary shall make such transfer. No transfer under this paragraph shall be required to be repaid.

(e) The provisions of subsections (e), (f), and (g) of section 15 are hereby made applicable to the Social Security Equivalent Benefit Account.

(f)(1) For purposes of making payments of social security equivalent benefits, references in the [1] Act of the Railroad Retirement Account shall be treated as references to the Social Security Equivalent Benefit Account.

(2) For purposes of this section, the term "social security equivalent benefits" means benefits payable under this Act which are of a kind taken into account in determining the amount of transfers made under section 7(c)(2) of this Act.

(45 U.S.C. 231n–1)

PRIVATE PENSIONS

SEC. 16. Nothing in this Act shall be taken as restricting or discouraging payment by employers to retired employees of pensions or gratuities in addition to the annuities paid to such employees under this Act, nor shall this Act be taken as terminating any trust heretofore, created for the payment of such pensions or gratuities. The annuity, except a supplemental annuity under section 2(b), of an individual shall not be reduced on account of any pension or gratuity paid by an employer to such individual.

(45 U.S.C. 231o)

FREE TRANSPORTATION

SEC. 17. It shall not be unlawful for carriers by railroad subject to this Act to furnish free transportation to individuals receiving annuities under this Act in the same manner as such transportation is furnished to employees in their service.

(45 U.S.C. 231p)

CREDITING SERVICE UNDER THE SOCIAL SECURITY ACT

SEC. 18. (1) Except as provided in subdivision (2), the term "employment" as defined in section 210 of the Social Security Act shall not include service performed by an individual as an employee as defined in section 1(b) of this Act.

(2) For the purpose of determining (i) monthly insurance benefits under the Social Security Act to an employee who will have completed less than ten years of service and to others deriving from him or her during his or her life and (ii) monthly insurance benefits and lump-sum death benefits under such Act with respect to the death of an employee who (A) will have completed less than ten years of service or (B) will have completed ten or more years of service but will not have had a current connection with the railroad industry at the time of his death, and for the purposes of section 203 and section 216(i) of that Act, section 210(a)(9) of the Social Security Act and subdivision (1) of this section shall not operate to

[1] So in original. Probably should be "this".

exclude from "employment" under the Social Security Act service which would otherwise be included in such "employment" but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee. In the application of the Social Security Act pursuant to this subdivision to service as an employee, all service as defined in section 1(d) of this Act shall be deemed to have been performed within the United States.

(45 U.S.C. 231q)

AUTOMATIC BENEFIT ELIGIBILITY REQUIREMENT ADJUSTMENTS

SEC. 19. (a) If title II of the Social Security Act is amended at any time after December 31, 1974, to reduce the eligibility requirements for old-age insurance benefits, disability insurance benefits, wife's insurance benefits payable to a wife, husband's insurance benefits, child's insurance benefits payable to a child of a deceased individual, widow's insurance benefits payable to a widow, widower's insurance benefits, mother's insurance benefits payable to a widow, or parent's insurance benefits, such reduced eligibility requirements shall be applicable, in accordance with regulations prescribed by the Board, to individuals, spouses, or survivors, as the case may be, under section 2 of this Act to the extent that such reduced eligibility requirements would provide such individuals, spouses, or survivors with entitlement to annuities under such section 2 to which they would not be entitled except for such reduced eligibility requirements: *Provided, however,* That no annuity shall be paid to any person pursuant to the provisions of this subsection if that person does not satisfy an eligibility requirement imposed by section 2 of this Act of a kind not imposed by the Social Security Act on December 31, 1974, or an eligibility requirement imposed by section 2 of this Act of a kind which was imposed by the Social Security Act on December 31, 1974, but which was not reduced by the amendment to that Act: *Provided further,* That the annuity amounts to which such individuals, spouses, or survivors will be entitled under this Act by reason of the provisions of this subsection shall be only such amounts as are determined under the provisions of section 3(a), 4(a), or 4(f), respectively, of this Act.

(b) If title II of the Social Security Act is amended at any time after December 31, 1974 to provide monthly insurance benefits under that Act to a class of beneficiaries not entitled to such benefits thereunder prior to January 1, 1975, every person who is a member of such class of beneficiaries shall be entitled to annuities under section 2 of this Act, in accordance with regulations prescribed by the Board, in an amount equal to the amount of the monthly insurance benefit to which such person would have been entitled under the Social Security Act if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(c) If section 226 or title XVII of the Social Security Act is amended at any time after December 31, 1974, to reduce the conditions of entitlement to, or to expand the nature of, the benefits pay-

able thereunder, or if health care benefits in addition to, or in lieu of, the benefits payable under such section 226 or such title XVIII are provided by any provision of law which becomes effective at any time after December 31, 1974, such reductions in the conditions of entitlement to benefits, such expanded benefits, or such additional, or substituted, health care benefits shall be available to every employee (as defined in this Act), and those deriving from him, in the same manner, and to the same, extent, as if his service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act. The Board shall have the same authority, in accordance with regulations prescribed by it, to determine the rights of employees who will have completed ten years of service, and of those deriving from such employees, to benefits provided by reason of the provisions of this subsection as the Secretary of Health, Education, and Welfare has with respect to individuals insured under the Social Security Act.

(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section—

(1) No annuity or other benefit shall be payable to any person on the basis of the compensation and years of service of an individual by reason of the provisions of subsection (a), (b), or (c) of this section if, and to the extent that, such annuity or other benefit would duplicate a benefit payable to such person on the basis of such compensation and years of service under a provision of the Social Security Act, or any other Act of Congress, which becomes effective after December 31, 1974.

(2) No annuity shall be payable to a person by reason of subsection (a) or (b) of this section unless the individual upon whose compensation and years of service such annuity would be based will have (A) completed ten years of service, and (B) in the case of a survivor, had a current connection with the railroad industry at the time of his death.

(3) If the Social Security Act is amended after December 31, 1974, to remove any, or all, restriction on the receipt of more than one monthly insurance benefit thereunder, annuity amounts provided a person under section 3(h), 4(e), or 4(h) of this Act, or under section 204(a)(3), 204(a)(4), 206(3), or 207(3) of title II of this Act, shall be reduced (but not below zero) by the amount of any annuity provided such person under this Act by reason of such amendment.

(4) If and to the extent that an annuity or other benefit payable to a person by reason of the provisions of subsection (a), (b), or (c) of this section duplicates an annuity or other benefit then payable to such person under other provisions of this Act, such annuity or other benefit then payable under other provisions of this Act shall be reduced (but not below zero) by the amount of the annuity or other benefit payable by reason of subsection (a), (b), or (c).

(45 U.S.C. 231r)

SEPARABILITY

SEC. 20. If any provision of this Act, or the application thereof to any person or circumstance, should be held invalid, the remain-

der of such Act, or the application of such provision to other persons or circumstances, shall not be affected thereby.

(45 U.S.C. 231s)

SHORT TITLE

SEC. 21. This Act may be cited as the "Railroad Retirement Act of 1974".

(45 U.S.C. 231t)

BENEFIT PRESERVATION

SEC. 22. (a)(1) On or before May 1 of each year beginning in 1984, the Railroad Retirement Board shall prepare a five-year projection of anticipated revenues to and payments from the Railroad Retirement Account to determine the ability of such Account to pay benefits in each of the next succeeding five calendar years. No later than July 1 of each year, the Board shall submit a written report to the President, the Speaker of the House, and the President of the Senate setting forth the results of the projection prepared pursuant to the preceding sentence. If the projection indicates that the funds in the Railroad Retirement Account will be insufficient to pay the full amount of the benefits under this Act which are payable from that Account at any time during the five-year period, the Board's report shall include—

(A) the first fiscal year during which benefits under this Act must be reduced, in the absence of any adjustments, because insufficient funds (including any general revenue borrowing authority under this Act) would preclude payment of full benefits (other than benfits[1] payable from the Dual Benefits Payments Account) for every month in such fiscal year;

(B) the first fiscal year during which the Board would recommend suspension of the authority to borrow contained in section 10(d) of the Railroad Unemployment Insurance Act, in order to prevent depletion of the Railroad Retirement Account; and

(C) the amount, if any, of adjustments (stated in terms of percentage of taxable payroll), and any other changes such as cash flow adjustments, necessary to preserve the financial solvency of the Railroad Retirement Account, if such adjustments were effective at the beginning of the next succeeding fiscal year.

(2) Not less than 20 nor more than 30 days after the submission of a written report under this subsection which indicates that, in the absence of any adjustments, the Railroad Retirement Account will contain insufficient funds to pay the full amount of the benefits under this Act which are payable from that Account at some time during the five-year period covered by the report, the Board shall publish such report in the Federal Register.

(b) Not later than 180 days after the publication in the Federal Register of any Board report referred to in subsection (a) of this section which states an amount of adjustments (in terms of per-

[1] So in original. Should be "benefits".

centage of taxable payroll) necessary to preserve the financial solvency of the railroad retirement account—

(1) representatives of railroad employees and carriers shall, jointly or separately, submit to the President, the Speaker of the House, and the President of the Senate funding proposals designed to preserve the financial solvency of the Railroad Retirement Account; and

(2) the President shall submit to the Speaker of the House and the President of the Senate such recommendations as he may deem appropriate with respect to the preservation of the Railroad Retirement Account, including a specific proposal to assure continuous payments of social security equivalent benefits by separating the social security equivalent benefits from industry pension equivalent benefits payable under this Act.

(c) Not later than 180 days after the submission of a written report under subsection (a) of this section which states the first fiscal year during which benefits under this Act must be reduced because insufficient funds would preclude payment of full benefits for every month of that year, the Board shall issue and publish in the Federal Register such regulations as may be necessary which shall be designed to—

(1) provide a constant level of benefits at the maximum level possible for every month of that fiscal year; and

(2) provide that no individual shall receive less during that fiscal year than the amount otherwise payable if the employee's service as an employee after December 31, 1936, had been covered under the Social Security Act, minus the amount of any reduction required under section 3(m) or 4(i) of this Act.

Unless otherwise provided by law enacted after the date of enactment of this section, or by a later report filed by the Board under subsection (a) of this section, regulations issued by the Board under this subsection shall apply beginning with the fiscal year designated by the Board in its written report under subsection (a) of this section. Any Board regulation which becomes effective under this subsection may be modified, rescinded, or superseded in the same manner and to the same extent as in the case of any other Board regulation issued under authority of this Act.

(45 U.S.C. 231u)

RAILROAD UNEMPLOYMENT INSURANCE ACT

RAILROAD UNEMPLOYMENT INSURANCE ACT

(as amended through January 1999)

AN ACT To regulate interstate commerce by establishing an unemployment insurance system for individuals employed by certain employers engaged in interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. For the purposes of this Act, except when used in amending the provisions of other Acts—

(a) The term "employer" means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad or the receipt, delivery, elevation, transfer in transit, refrigeration, or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and by-laws of such organizations. The

term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) The term "carrier" means a railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code.

(c) The term "company" includes corporations, associations, and joint-stock companies.

(d) The term "employee" (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation, or (ii) an employee representative. The term "employee" shall include an employee of a local lodge or division defined as an employer in section 1(a) only if he was in the service of a carrier on or after August 29, 1935. The term "employee" includes an officer of an employer.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clause (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees or an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees or an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion

which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside of the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

(f) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term employer as defined in section 1(a) who before or after August 29, 1935, was in the service of an employer as defined in section 1(a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(g) The term "employment" means service performed as an employee. For the purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this Act, employment after June 30, 1940, in the service of a local lodge or division of a railway-labor-organization employer or as an employee representative shall be disregarded. For purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this Act, employment as a delegate to a national or international convention of a railway labor organization defined as an "employer", in subsection (a) of this section, shall be disregarded if the individual having such employment has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.[1]

(h) The term "registration period" means, with respect to any employee, the period which begins with the first day for which such employee registers at an employment office in accordance with such regulations as the Board may prescribe, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office; and thereafter each period which begins with the first day for which he next registers at an employment office after the end of his last preceding registration period which began with a day for which he registered at an employment office and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office.

[1] As amended by Public Law 746, 83d Cong., 2d sess., 1954. An effect of this subsection is to cause an employee of a local lodge or division and an employee representative with respect to employment after June 30, 1940, not to be a "qualified employee" under section 3 and not be subject to the provisions of section 8 as to contribution.

The term "registration period" means also, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness for a "period of continuing sickness" (as defined in section 2(a) of this Act) is filed in his behalf in accordance with such regulations as the Board may prescribe, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness for a "period of continuing sickness" (as defined in section 2(a) of this Act) was filed in his behalf and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day with respect to which a statement of sickness for a new "period of continuing sickness" (as defined in section 2(a) of this Act) is filed in his behalf.

(i)(1) IN GENERAL.—The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative, except that in computing the compensation paid to any employee, no part of any month's compensation in excess of the monthly compensation base (as defined in subdivision (2)) for any month shall be recognized. Solely for the purpose of determining the compensation received by an employee in a base year, the term "compensation" shall include any separation allowance or subsistence allowance paid under any benefit schedule provided under section 701 of title VII of the Regional Rail Reorganization Act of 1973 and any termination allowance paid under section 702 of that Act, but does not include any other benefits payable under that title. The total amount of any subsistence allowance payable under a benefit schedule provided pursuant to section 701 of the Regional Rail Reorganization Act of 1973 shall be considered as being compensation in the month in which the employee first timely filed a claim for such an allowance. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be

deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 6 of this Act, the period during which such compensation will have been earned.

(2) MONTHLY COMPENSATION BASE.—

(A) IN GENERAL.—For purposes of subdivision (1), the term "monthly compensation base" means the amount—

(i) of $400 for calendar months before January 1, 1984;

(ii) of $600 for calendar months after December 31, 1983 and before January 1, 1989; and

(iii) computed under subparagraph (B) for months after December 31, 1988.

(B) COMPUTATION.—

(i) IN GENERAL.—The amount of the monthly compensation base for each calendar year beginning after December 31, 1988, is the greater of—

(I) $600; or

(II) the amount, as rounded under clause (iii) if applicable, computed under the formula:

$$B=600 \left(1+ \frac{A-37,800}{56,700} \right)$$

(ii) MEANING OF SYMBOLS.—For the purposes of the formula in clause (i)—

(I) "B" is the dollar amount of the monthly compensation base; and

(II) "A" is the amount of the applicable base with respect to tier 1 taxes, for the calendar year for which the monthly compensation base is being computed, as determined under section 3231(e)(2) of the Internal Revenue Code of 1986.

(iii) ROUNDING RULE.—If the monthly compensation base computed under this formula is not a multiple of $5, it shall be rounded to the nearest multiple of $5, with such rounding being upward in the event the amount computed is equidistant between two multiples of $5.

(j) The term "remuneration" means pay for services for hire, including pay for time lost, and tips, but pay for time lost shall be deemed earned on the day on which such time is lost. The term "remuneration" includes also earned income other than for services for hire if the accrual thereof in whole or in part is ascertainable with respect to a particular day or particular days. The term "remuneration" does not include any money payments received pursuant to any nongovernmental plan for unemployment insurance, maternity insurance, or sickness insurance.

(k) Subject to the provisions of section 4 of this Act, (1) a day of unemployment, with respect to any employee, means a calendar day on which he is able to work and is available for work and with respect to which (i) no remuneration is payable or accrues to him and (ii) he has, in accordance with such regulations as the Board may prescribe, registered at an employment office; (2) a "day of sickness", with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work, or, with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health, and with respect to which (i) no remuneration is payable or accrues to him, and (ii) in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe: *Provided, however,* That "subsidiary remuneration", as hereinafter defined in this subsection, shall not be considered remuneration for the purpose of this subsection except with respect to an employee whose base-year compensation, exclusive of earnings from the position or occupation in which he earned such subsidiary remuneration, is less than an amount that is equal to 2.5 times the monthly compensation base for months in such base year as computed under section 1(i) of this Act: *Provided further,* That remuneration for a working day which includes a part of each of two consecutive calendar days shall be deemed to have been earned on the first of such two days, and any individual who takes work for such working day shall not by reason thereof be deemed not available for work on the second of such calendar days: *Provided further,* That any calendary day on which no remuneration is payable to or accrues to an employee solely because of the application to him of mileage or work restrictions agreed upon in schedule agreements between employers and employees or solely because he is standing by for or laying over between regularly assigned trips or tours of duty shall not be considered either a day of unemployment or a day of sickness.

For the purpose of this subsection, the term "subsidiary remuneration" means, with respect to any employee, remuneration not in excess of an average of $15 a day for the period with respect to which such remuneration is payable or accrues, if the work for which the remuneration is derived (i) requires substantially less than full time as determined by generally prevailing standards, and (ii) is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(l)(1) The term "benefits" (except in phrases clearly designating other payments) means the money payments payable to an employee as provided in this Act, with respect to his unemployment or sickness.

(2) The term "statement of sickness" means a statement with respect to days of sickness of an employee, executed in such manner and form by an individual duly authorized pursuant to section 12(i) to execute such statements, and filed as the Board may precribe by regulations.

(m) The term "benefit year" means the twelve-month period beginning July 1 of any year and ending June 30 of the next year, except that a registration period beginning in June and ending in July shall be deemed to be in the benefit year ending in such month of June.

(n) The term "base year" means the completed calendar year immediately preceding the beginning of the benefit year.

(o) The term "employment office" means a free employment office operated by the Board, or designated as such by the Board pursuant to section 12(i) of this Act.

(p) The term "account" means the railroad unemployment insurance account established pursuant to section 10 of this Act in the unemployment trust fund.

(q) The term "fund" means the railroad unemployment insurance administration fund, established pursuant to section 11 of this Act in the unemployment trust fund.

(r) The term "Board" means the Railroad Retirement Board.

(s) The term "United States", when used in a geographical sense, means the States and the District of Columbia.

(t) The term "State" means any of the States or the District of Columbia.

(u) Any reference in this Act to any other Act of Congress, including such reference in amendments to other Acts, includes a reference to such other acts as amended from time to time.

(45 U.S.C. 351)

BENEFITS

SEC. 2. (a)(1)(A) PAYMENT OF UNEMPLOYMENT BENEFITS.—

(i) GENERALLY.—Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of unemployment in excess of 4 during any registration period within a period of continuing unemployment.

(ii) WAITING PERIOD FOR FIRST REGISTRATION PERIOD.—Benefits shall be payable to any qualified employee for each day of unemployment in excess of 7 during that employee's first registration period in a period of continuing unemployment if such period of continuing unemployment is the employee's initial period of continuing unemployment commencing in the benefit year.

(iii) STRIKES.—

(I) INITIAL 14-DAY WAITING PERIOD.—If the Board finds that a qualified employee has a period of continuing unemployment that includes days of unemployment due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which such employee was last employed, no benefits shall be payable for such employee's first 14 days of unemployment due to such stoppage of work.

(II) SUBSEQUENT DAYS OF UNEMPLOYMENT.—For subsequent days of unemployment due to the same stoppage of work, benefits shall be payable as provided in clause (i) of this subparagraph.

(III) SUBSEQUENT PERIODS OF CONTINUING UNEMPLOYMENT.—If such period of continuing unemployment ends by reason of clause (v) but the stoppage of work continues, the waiting period established in clause (ii) shall apply to the employee's first registration period in a new period of continuing unemployment based upon the same stoppage of work.

(iv) DEFINITION OF PERIOD OF CONTINUING UNEMPLOYMENT.—Except as limited by clause (v), for the purposes of this subparagraph, the term "period of continuing unemployment" means—

(I) a single registration period that includes more than 4 days of unemployment;

(II) a series of consecutive registration periods, each of which includes more than 4 days of unemployment; or

(III) a series of successive registration periods, each of which includes more than 4 days of unemployment, if each succeeding registration period begins within 15 days after the last day of the immediately preceding registration period.

(v) SPECIAL RULE REGARDING END OF PERIOD.—For purposes of applying clause (ii), a period of continuing unemployment ends when an employee exhausts rights to unemployment benefits under subsection (c) of this section.

(vi) LIMIT ON AMOUNT OF BENEFITS.—No benefits shall be payable to an otherwise eligible employee for any day of unemployment in a registration period where the total amount of the remuneration (as defined in section 1(j)) payable or accruing to him for days within such registration period exceeds the amount of the base year monthly compensation base. For purposes of the preceding sentence, an employee's remuneration shall be deemed to include the gross amount of any remuneration that would have become payable to that employee but did not become payable because that employee was not ready or willing to perform suitable work available to that employee on any day within such registration period.

(B) PAYMENT OF SICKNESS BENEFITS.—

(i) GENERALLY.—Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of sickness after the 4th consecutive day of sickness in a period of continuing sickness but excluding 4 days of sickness in any registration period in such period of continuing sickness.

(ii) WAITING PERIOD FOR FIRST REGISTRATION PERIOD.—Benefits shall be payable to any qualified employee for each day of sickness in excess of 7 during that employee's first registration period in a period of continuing sickness if such period of continuing sickness is the employee's initial period of continuing sickness commencing in the benefit year. For the purposes of this clause, the first registration period in a period of continuing sickness is that registration period that first begins with 4 consecutive days of sickness and includes more than 4 days of sickness.

(iii) DEFINITION OF PERIOD OF CONTINUING SICKNESS.—For the purposes of this subparagraph, a period of continuing sickness means—

(I) a period of consecutive days of sickness, whether from 1 or more causes; or

(II) a period of successive days of sickness due to a single cause without interruption of more than 90 consecutive days which are not days of sickness.

(iv) SPECIAL RULE REGARDING END OF PERIOD.—For purposes of applying clause (ii), a period of continuing sickness ends when an employee exhausts rights to sickness benefits under subsection (c) of this section.

(2) The daily benefit rate with respect to any such employee for such day of unemployment or sickness shall be in an amount equal to 60 per centum of the daily rate of compensation for the employee's last employment in which he engaged for an employer in the base year, but not less than $12.70: *Provided, however,* That for registration periods beginning after June 30, 1975, but before July 1, 1976, such amount shall not exceed $24 per day of such unemployment or sickness, that for registration periods beginning after June 30, 1976, but before July 1, 1988, such amount shall not exceed $25 per day of such unemployment or sickness, that for registration periods beginning after June 30, 1988, but before July 1, 1989, such amount shall not exceed $30 per day of unemployment or sickness, and that for registration periods beginning after June 30, 1989, such amount shall not exceed the maximum daily benefit rate provided in paragraph (3) of this subsection. The daily rate of compensation referred to in this paragraph shall be determined by the Board on the basis of information furnished to the Board by the employee, his employer or both.

(3) The maximum daily benefit rate computed by the Board under section 12(r)(2) shall be the product of the monthly compensation base, as computed under section 1(i)(2) for the base year immediately preceding the beginning of the benefit year, multiplied by 5 percent. If the maximum daily benefit rate so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

(4) In computing benefits to be paid, days of unemployment shall not be combined with days of sickness in the same registration period.

(b) The benefits provided for in this section shall be paid to an employee at such reasonable intervals as the Board may prescribe.

(c) MAXIMUM NUMBER OF DAYS FOR BENEFITS.—

(1) NORMAL BENEFITS.—

(A) GENERALLY.—The maximum number of days of unemployment within a benefit year for which benefits may be paid to an employee shall be 130, and the maximum number of days of sickness within a benefit year for which benefits may be paid to an employee shall be 130.

(B) LIMITATION.—The total amount of benefits that may be paid to an employee for days of unemployment within a benefit year shall in no case exceed the employee's compensation in the base year; and the total amount of benefits that may be paid to an employee for days of

sickness within a benefit year shall in no case exceed the employee's compensation in the base year, except that notwithstanding section 1(i), in determining the employee's compensation in the base year for the purpose of this sentence, any money remuneration paid to the employee for services rendered as an employee shall be taken into account that is not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) bears to $600.

(2) EXTENDED BENEFITS.—

(A) GENERALLY.—With respect to an employee who has 10 or more years of service as defined in section 1(f) of the Railroad Retirement Act of 1974, who did not voluntarily retire and (in a case involving exhaustion of rights to normal benefits for days of unemployment) did not voluntarily leave work without good cause, and who had current rights to normal benefits for days of unemployment or days of sickness in a benefit year but has exhausted such rights, the benefit year in which such rights are exhausted shall be deemed not to be ended until the last day of the extended benefit period determined under this paragraph, and extended unemployment benefits or extended sickness benefits (depending on the type of normal benefit rights exhausted) may be paid for not more than 65 days of unemployment or 65 days of sickness within such extended benefit period.

(B) BEGINNING DATE.—An employee's extended benefit period shall begin on the employee's first day of unemployment or first day of sickness, as the case may be, following the day on which the employee exhausts the employee's then current rights to normal benefits for days of unemployment or days of sickness and shall continue for 7 consecutive 14-day periods, each of which shall constitute a registration period, but no such extended benefit period shall extend beyond the beginning of the first registration period in a benefit year in which the employee is again qualified for benefits in accordance with section 3 on the basis of compensation earned after the first of such consecutive 14-day periods has begun.

(C) TERMINATION WHEN EMPLOYEE REACHES AGE OF 65.—Notwithstanding any other provision of this paragraph, an extended benefit period for sickness benefits shall terminate on the day next preceding the date on which the employee attains age 65, except that it may continue for the purpose of paying benefits for days of unemployment.

(3) ACCELERATED BENEFITS.—

(A) GENERAL RULE.—With respect to an employee who has 10 or more years of service as defined in section 1(f) of the Railroad Retirement Act of 1974, who did not voluntarily retire, and (in a case involving unemployment benefits) did not voluntarily leave work without good cause, who has 14 or more consecutive days of unemployment, or 14 or more consecutive days of sickness, and who is not a

qualified employee with respect to the general benefit year current when such unemployment or sickness commences but is or becomes a qualified employee for the next succeeding general benefit year, such succeeding general benefit year shall, in that employee's case, begin on the first day of the month in which such unemployment or sickness commences.

(B) EXCEPTION.—In the case of a succeeding benefit year beginning in accordance with subparagraph (A) by reason of sickness, such sentence shall not operate to permit the payment of benefits in the period provided for in such sentence for any day of sickness beginning with the date on which the employee attains age 65, and continuing through the day preceding the first day of the next succeeding general benefit year.

(C) DETERMINATION OF AGE.—For the purposes of this subsection, the Board may rely on evidence of age available in its records and files at the time determinations of age are made.

(d) If the Board finds that at anytime more than the correct amount of benefits has been paid to any individual under this Act or a payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) recovery by adjustments in subsequent payments to which such individual is entitled under this Act or any other Act administered by the Board may, except as otherwise provided in this subsection, be made under regulations prescribed by the Board. If such individual dies before recovery is completed, recovery may be made by set-off or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act or any other Act administered by the Board to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

Adjustments under this subsection may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case recovery shall be deemed to have been completed upon such recertification.

There shall be no recovery in any case in which more than the correct amount of benefits has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940), who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this Act or would be against equity or good conscience.

No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under the third paragraph of this subsection or has been begun but cannot be completed under the first paragraph of this subsection.

(e) Notwithstanding any other law of the United States, or of any State, Territory, or the District of Columbia, no benefits shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

(f) If (i) benefits are paid to any employee with respect to unemployment or sickness in any registration period, and it is later determined that remuneration is payable to such employee with respect to any period which includes days in such registration period which had been determined to be days of unemployment or sickness, and (ii) the person or company from which such remuneration is payable has, before payment thereof, notice of the payment of benefits upon the basis of days of unemployment or sickness included in such period, the remuneration so payable shall not be reduced by reason of such benefits but the remuneration so payable, to the extent to which benefits were paid upon the basis of days which had been determined to be days of unemployment or sickness and which are included in the period for which such remuneration is payable, shall be held to be a special fund in trust for the Board. The amount of such special fund shall be paid to the Board and in the collection thereof the Board shall have the same authority, and the same penalties shall apply, as are provided in section 8 of this Act with respect to contributions. The proceeds of such special fund shall be credited to the account. Such benefits, to the extent that they are represented in such a special fund which has been collected by the Board, shall be disregarded for the purposes of subsection (c) of this section.

(g) Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefor, to the same individual or individuals to whom any accrued annuities under section 6(a)(1) of the Railroad Retirement Act of 1974 are paid. In the event that no such accrued annuities are paid, and if application for such accrued benefits is filed prior to the expiration of two years after the death of the individual to whom such benefits accrued, such accrued benefits shall be paid, upon certification by the Board, to the individual or individuals who would be entitled thereto under section 6(a)(1) of the Railroad Retirement Act of 1974 if such accrued benefits were accrued annuities. If there is no individual to whom all or any part of such accrued benefits can be paid in accordance with the foregoing provision, such benefits or part thereof shall escheat to the credit of the account.

(45 U.S.C. 352)

QUALIFYING CONDITION

SEC. 3. An employee shall be a "qualified employee" if the Board finds that his compensation with respect to the base year will have been not less than 2.5 times the monthly compensation base for months in such base year as computed under section 1(i) of this Act, and, if such employee has had no compensation prior

to such year, that he will have had compensation with respect to each of not less than five months in such year.[1]

(45 U.S.C. 353)

DISQUALIFYING CONDITIONS

SEC. 4. (a–1) There shall not be considered as a day of unemployment or as a day of sickness, with respect to any employee—

(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments under the Railroad Retirement Act of 1974, or insurance benefits under the title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this Act, or any other social insurance payments under any law: *Provided,* That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further,* That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;

(iii) if he is paid a separation allowance, any of the days in the period beginnning with the day following his separation from service and continuing for that number of consecutive fourteen-day periods which is equal, or most nearly equal, to the amount of the separation allowance divided (i) by ten times his last daily rate of compensation prior to his separation if he normally works five days a week, (ii) by twelve times such rate if he normally works six days a week, and (iii) by fourteen times such rate if he normally works seven days a week;[2]

[1] As amended by Public Law No 141, 76th Cong., 1st sess., 1939; Public Law No. 833. 76th Cong., 3d sess., 1940; Public Law 572, 79th Cong., 2d sess., 1946; Public Law 343, 82d Cong., 2d sess., 1952; Public Law 746, 83d Cong., 2d sess., 1954; Public Law 86–28, 1959; Public Law 88–133, 1963. Section 1(g) causes an employeed of a local lodge or division and an employee representative not to be a "qualified employee" with respect to employment after June 30, 1940; and Public Law 90–257, 1968.

[2] So in original. The semicolon probably should be a period.

(a–2) There shall not be considered as a day of unemployment with respect to any employee—

(i)(A) subject to the provisions of subdivision (B) hereof, any of the days in the period beginning with the day with respect to which the Board finds that he left work voluntarily, and continuing until he has been paid compensation of not less than $1,500 with respect to time after the beginning of such period and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 1(i) of this Act;

(B) if the Board finds that he left work voluntarily with good cause, the provisions of subdivision (A) shall not apply, with respect to him, to any day in a registration period if such period does not include any day which is in a period for which he could receive benefits under an unemployment compensation law other than this Act, and he so certifies. Such certification shall, in the absence of evidence to the contrary, be accepted subject to the penalty provisions of section 9(a) of this Act;

(ii) any of the thirty days beginning with the day with respect to which the Board finds that he failed, without good cause, to accept suitable work available on such day and offered to him, or to comply with instructions from the Board requiring him to apply for suitable work or to report, in person or by mail as the Board may require, to an employment office;

(iii) subject to the provisions of subsection (b) of this section, any day with respect to which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, and the Board finds that such strike was commenced in violation of the provisions of the Railway Labor Act or in violation of the established rules and practices of a bona fide labor organization of which he was a member.

(b) The disqualification provided in section 4(a–2)(iii) of this Act shall not apply if the Board finds that—

(i) the employee is not participating in or financing or directly interested in the strike which causes the stoppage of work: *Provided,* That payment of regular union dues shall not be construed to constitute financing a strike or direct interest in a strike within the meaning of this and the following paragraphs; and

(ii) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed in the establishment, premises, or enterprise at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: *Provided,* That if separate types of work are commonly conducted in separate departments of a single enterprise, each such department shall, for the purposes of this subsection, be deemed to be a separate establishment, enterprise, or other premises.

(c) No work shall be deemed suitable for the purposes of section 4(a–2)(ii) of this Act, and benefits shall not be denied under this Act to any otherwise qualified employee for refusing to accept work if—

(i) the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) the remuneration, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality, or the rate of remuneration is less than the union wage rate, if any, for similar work in the locality;

(iii) as a condition of being employed he would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(iv) acceptance of the work would require him to engage in activities in violation of law or which, by reason of their being in violation of reasonable requirements of the constitution, bylaws, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization; or

(v) acceptance of the work would subject him to loss of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act, and any other employer.

(d) In determining, within the limitations of section 4(c) of this Act, whether or not any work is suitable for an employee for the purposes of section 4(a–2)(ii) of this Act, the Board shall consider, in addition to such other factors as it deems relevant, (i) the current practices recognized by management and labor with respect to such work; (ii) the degree of risk involved to such employee's health, safety, and morals; (iii) his physical fitness and prior training; (iv) his experience and prior earnings; (v) his length of unemployment and prospects for securing work in his customary occupation; and (vi) the distance of the available work from his residence and from his most recent work.

(e) For the purposes of section 4(a–2)(i) of this Act, no voluntary leaving of work shall be deemed to have been without good cause if the Board finds that such work would not have been suitable for the purposes of section 4(a–2)(ii) of this Act.

(45 U.S.C. 354

CLAIMS FOR BENEFITS

SEC. 5. (a) Claims for benefits and appeals from determinations with respect thereto shall be made in accordance with such regulations as the Board shall prescribe. Each employer shall post and maintain, in places readily accessible to employees in his service, such printed statements concerning such regulations as the Board supplies to him for such purpose, and shall keep available to his employees copies of such printed statements. Such printed statements shall be supplied by the Board to each employer without cost to him.

(b) The Board is authorized and directed to make findings of fact with respect to any claim for benefits and to make decisions as to the right of any claimant to benefits. The Board is further authorized to hold each such hearings, to conduct such investigations and other proceedings, and to establish, by regulations or otherwise, such procedures as it may deem necessary or proper for the determination of a right to benefits. When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this Act, the Board shall provide notice of such determination to the claimant's base-year employer or employers.

(c)(1) Each qualified employee whose claim for benefits has been denied in whole or in part upon an initial determination with respect thereto upon a basis other than one which is reviewable pursuant to one of the succeeding paragraphs of this subsection shall be granted an opportunity for a fair hearing thereon before a referee or such other reviewing body as the Board may establish or assign thereto. In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.

(2) Any claimant whose claim for benefits has been denied in an initial determination with respect thereto upon the basis of his not being a qualified employee, and any claimant who contends that under an initial determination of his claim he has been awarded the benefits at less than the proper rate, may appeal to the Board for the review of such determination. Thereupon the Board shall review the determination and for such review may designate one of its officers or employees to receive evidence and to report to the Board thereon together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(3) Any base-year employer of a claimant whose claim for benefits has been granted in whole or in part, either in an initial determination with respect thereto or in a determination after a hearing pursuant to paragraph (1), and who contends that the determination is erroneous for a reason or reasons other than a reason that is reviewable under paragraph (4), may appeal to the Board for review of such determination. Despite such an appeal, the benefits awarded shall be paid to such claimant, subject to recovery by the Board if and to the extent found on the appeal to have been erroneously awarded. The Board shall take such action as is appropriate to recover the amount of such benefits including if feasible adjustment in subsequent payments pursuant to the first two paragraphs of section 2(d) of this Act. Upon an appeal, the Board shall

review the determination appealed from and for such review may designate one of its officers or employees to receive evidence and report to the Board thereof together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(4) In any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this Act but which denies that it is such an employer, such benefits awarded on such basis shall be paid to such claimant subject to a right of recovery of such benefits. The Board shall thereupon designate one of its officers or employees to receive evidence and to report to the Board on whether such benefits should be repaid. The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this Act, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributors are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceedings and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the proceedings provided for in this paragraph and for decisions upon such proceedings.

(5) Final decision of the Board in the cases provided for in the preceding three paragraphs shall be communicated to the claimant and to the other interested parties within fifteen days after it is made. Any properly interested party notified, as hereinabove provided, of his right to participate in the proceedings may obtain a review of any such decision by which he claims to be aggrieved or the determination of any issue therein the manner provided in subsection (f) of this section with respect to the review of the Board's decisions upon claims for benefits and subject to all provisions of law applicable to the review of such decisions. Subject only to such review, the decision of the Board upon all issues determined in such decisions shall be final and conclusive for all purposes and shall conclusively establish all rights and obligations, arising under this Act, of every party notified as hereinabove provided of his right to participate in the proceedings.

(6) For purposes of this subsection and subsections (d) and (f), any base-year employer of the claimant is a properly interested party.

(7) Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f).

(d) The Board shall prescribe regulations governing the filing of cases with and the decisions of cases by reviewing bodies, and the review of such decisions. The Board may provide for intermediate reviews of such decisions by such bodies as the Board may establish or assign thereto. The Board may (i) on its own review a decision of an intermediate reviewing body on the basis of the evidence previously submitted in such case, and may direct the taking of additional evidence, or (ii) permit such parties as if finds properly interested in the proceedings to take appeals to the Board. Unless a review or an appeal is had pursuant to this subsection, the decision of an intermediate reviewing body shall, subject to such regulations as the Board may prescribe, be deemed to be the final decision of the Board.

(e) In any proceeding other than a court proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling, but a full and complete record shall be kept of all proceedings and testimony, and the Board's final determination, together with its findings of fact and conclusions of law in connection therewith, shall be communicated to the parties within fifteen days after the date of such final determination.

(f) Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act, of which claimant is a member, or any base-year employer of the claimant, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Court of Appeals for the Seventh Circuit or in the United States Court of Appeals for the District of Columbia. A copy of such petition, together with initial process, shall forthwith be served upon the Board or any officer designated by it for such purpose. A copy of such petition also shall forthwith be served upon any other properly interested party, and such party shall be a party to the review proceeding. Service may be made upon the Board by registered mail addressed to the Chairman. Within thirty days after receipt of service, or within such additional time as the court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding

and of the question determined therein.[1] It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. The findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive. No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record. The judgment and decree of the court shall be final, subject to review as in equity cases.

An applicant for review of a final decision of the Board concerning a claim for benefits shall not be liable for costs, including costs of service, or costs of printing records, except that costs may be assessed by the court against such applicant if the court determines that the proceedings for such review have been instituted or continued without reasonable ground.

(g) Findings of fact and conclusions of law of the Board in the determination of any claim for benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and the determination of the Board that the unexpected funds in the account are available for the payment of any claim for benefits or refund under this Act, shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner other than that set forth in subsection (f) of this section.

(h) Except as may be otherwise prescribed by regulations of the Board, benefits payable with respect to any period prior to the date of a final decision of the Board with respect to a claim therefor, shall be paid only after such final decision.

(i) No claimant or other properly interested person claiming benefits shall be charged fees of any kind by the Board, its employees or representatives, with respect to such claim. Any such claimant or other properly interested person may be represented by counsel or other duly authorized agent, in any proceeding before the Board or its representatives of a court, but no such counsel or agent for a claimant shall either charge or receive for such services more than an amount approved by the Board or by the court before whom the proceedings of the Board are reviewed. Any person who violates any provision of this subsection shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year.

(45 U.S.C. 355)

[1] Public Law 98–620 section 402(47) eliminated a requirement that courts "give precedence" to review petition proceedings. The words to be stricken as set forth in section 402(47) were ", and shall be given precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence". In the law as it existed before Public Law 98–620, the words appear as ", and shall give precedence" et cetera.

CONCLUSIVENESS OF RETURNS OF COMPENSATION AND OF FAILURE TO MAKE RETURNS OF COMPENSATION

SEC. 6. Employers shall file with the Board, in such manner and at such times as the Board by regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall distribute to employees annual statements of compensation: *Provided,* That no returns shall be required of employers which would duplicate information contained in similar returns required under any other Act of Congress administered by the Board. The Board's record of the compensation so returned shall, for the purpose of determining eligibility for and the amount of benefits, be conclusive as to the amount of compensation paid to an employee during the period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to have been paid to an employee during a particular period shall, for the purposes of determining eligibility for and the amount of benefits, be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation in the one case, or failure to make or record return of the compensation in the other case, is called to the attention of the Board within eighteen months after the date on which the last return covering any portion of the calendar year which includes such period is required to have been made.

(45 U.S.C. 356)

FREE TRANSPORTATION

SEC. 7. It shall not be unlawful for carriers to furnish free transportation to employees qualified for benefits or serving waiting periods under this Act.

(45 U.S.C. 357)

CONTRIBUTION

SEC. 8. (a) EMPLOYER CONTRIBUTION.—

(1) IN GENERAL.—

(A) GENERAL RULE.—

(i) CONTRIBUTION RATE GENERALLY.—Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentage determined under subparagraph (B), (C), or (D), whichever is applicable, of so much of the compensation paid in any calendar month by such employer to any employee as is not in excess of the monthly compensation base for that month as computed under section 1(i).

(ii) MULTIPLE EMPLOYER LIMITATION.— If compensation is paid to an employee by more than one employer in any calendar month—

(I) the contributions required by this subsection shall not apply to any amount of the aggregate compensation paid to such employee by all such employers in such calendar month which

is in excess of such monthly compensation base; and

(II) each employer (other than a subordinate unit of a national-railway-labor-organization employer) shall be liable for that portion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him to such employee bears to the total compensation paid in such month by all such employers to such employee.

In the event that the compensation paid by such employers to the employee in such month is less than such monthly compensation base, each subordinate unit of a national-railway-labor-organization employer shall be liable for such portion of any additional contribution as the compensation paid by such employer to such employee in such month bears to the total compensation paid by all such employers to such employee in such month.

(B) TRANSITIONAL RULE.—

(i) 1ST, 2D, AND 3D CALENDAR YEARS.—Except as provided in clause (vi), with respect to compensation paid in calendar years 1988, 1989, and 1990, the contribution rate shall be 8 percent.

(ii) 4TH CALENDAR YEAR.—With respect to compensation paid in calendar year 1991, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage computed pursuant to the following formula:

$$R = \frac{2A+B}{3}$$

(iii) 5TH CALENDAR YEAR.—With respect to compensation paid in calendar year 1992, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage computed pursuant to the following formula:

$$R = \frac{2A+2C}{3}$$

(iv) MEANING OF SYMBOLS.—For purposes of the formulas in clauses (ii) and (iii)—

(I) "R" is the applicable contribution rate expressed as a percentage for months in the calendar year;

(II) "A" is the contribution rate determined under clause (i);

(III) "B" is the percentage rate for the employer, as determined under subparagraph (C), for calendar year 1991; and

(IV) "C" is the percentage rate for the employer, as determined under subparagraph (C), for calendar year 1992.

(v) SPECIAL RULE FOR CERTAIN COMPUTATIONS.—For purposes of computing B and C in such formulas—

(I) the percentage rate computed under subparagraph (C), if more than the maximum contribution limit computed under paragraph (20) shall not be reduced to that limit; and

(II) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or a 12-quarter period ending on a given June 30 shall be made on the basis of a period beginning on January 1, 1990, and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

(vi) SPECIAL TRANSITION RULE FOR PUBLIC COMMUTER RAILROADS.—With respect to each of calendar years 1989 and 1990, the contribution of the National Railroad Passenger Corporation and an employer which on the date of the enactment of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 is a publicly funded and publicly operated carrier providing rail commuter service shall be equal to the amount of benefits attributable to such carrier, plus an amount equal to 0.65 percent of the total compensation paid by that employer in that year on which that employer's contribution would be based under clause (i) if such employer's contribution were determined under that clause.

(C) EXPERIENCE-RATED CONTRIBUTIONS.—With respect to compensation paid in a calendar year that begins after December 31, 1992, the contribution rate for each employer shall be determined as follows:

(i) STEP 1.—Compute the employer's benefit ratio as of the preceding June 30 to 4 decimal points in accordance with paragraph (2).

(ii) STEP 2.—Subtract the employer's reserve ratio as of the preceding June 30 as computed to 4 decimal points in accordance with paragraph (4).

(iii) STEP 3.—Subtract the pooled credit ratio for the calendar year, if any, as computed to 4 decimal points in accordance with paragraph (12).

(iv) STEP 4.—Multiply by 100 the total arrived at under the steps set forth in clauses (i) through (iii) so

as to obtain a percentage rate, which shall be rounded to the nearest 100th of 1 percent. If the total arrived at under such steps is 0 or less than 0, the percentage rate as so computed shall be 0.

(v) STEP 5.—Add 0.65 to the percentage rate arrived at under clause (iv), representing the portion of the employer's contribution which is to be deposited to the credit of the fund under subsection (i).

(vi) STEP 6.—Add the surcharge rate for the calendar year, if any, as computed under paragraph (14).

(vii) STEP 7.—Add the pooled charge ratio for the calendar year, if any, as computed to 4 decimal points under paragraph (13) and multiplied by 100.

(viii) STEP 8.—Reduce the precentage[1] rate computed in accordance with the preceding steps to the maximum contribution limit computed under paragraph (20), if such rate is higher than such limit. The rate computed in accordance with the preceding steps, after any reduction under this clause, is the contribution rate.

(D) NEW-EMPLOYER CONTRIBUTION RATES.—Notwithstanding subparagraphs (B) and (C), the contribution rate applicable to a new employer who does not become subject to this Act until after December 31, 1989, shall be determined as follows:

(i) 1ST CALENDAR YEAR.—With respect to compensation paid in calendar months before the end of the first full calendar year in which the employer is subject to this Act, the contribution rate shall be the average contribution rate paid by all employers during the 3 calendar years preceding the calendar year before the calendar year in which the compensation is paid. The average contribution rate shall be determined—

(I) by dividing the aggregate contributions paid by all employers under this subsection in those 3 calendar years by the aggregate compensation with respect to which such contributions were paid; and

(II) by multiplying the resulting ratio as computed to 4 decimal points by 100.

(ii) 2D CALENDAR YEAR.—With respect to compensation paid in calendar months in the next calendar year, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage rate computed pursuant to the following formula:

[1] So in original. Probably should be "percentage".

$$R= \left(\frac{2(A2)+B}{3} \right)$$

(iii) 3D CALENDAR YEAR.—With respect to compensation paid in calendar months in the third full calendar year in which the employer is subject to the coverage of this Act, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage rate computed pursuant to the following formula:

$$R= \frac{A3+2C}{3}$$

(iv) SUBSEQUENT CALENDAR YEARS.—With respect to all calendar months in calendar years subsequent to that calendar year, the contribution rate shall be determined under subparagraph (C).

(v) MEANING OF SYMBOLS.—For purposes of the formulas in clauses (ii) and (iii)—

(I) "R" is the applicable contribution rate expressed as a percentage for months in the calendar year;

(II) "A1" is the contribution rate determined under clause (i) for such employer's first full calendar year;

(III) "A2" is the contribution rate which would have been determined under clause (i) if the employer's second calendar year had been its first full calendar year;

(IV) "A3" is the contribution rate which would have been determined under clause (i) if the employer's third calendar year had been such employer's first full calendar year;

(V) "B" is the contribution rate for the employer as determined under subparagraph (C) for the employer's second full calendar year; and

(VI) "C" is the contribution rate for the employer as determined under subparagraph (C) for the employer's third full calendar year.

(vi) SPECIAL RULE FOR CERTAIN COMPUTATIONS.—For purposes of computing B and C in such formulas—

(I) the percentage rate computed under subparagraph (C), shall not be reduced under clause (viii) of that subparagraph; and

(II) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or 12-quarter period ending on a given June 30 shall be made on the basis of a period commencing

with the first day of the first calendar quarter that begins after the date on which the employer first commenced paying compensation subject to this Act and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

(2) BENEFIT RATIO.—An employer's benefit ratio as of any given June 30 shall be determined by dividing all benefits charged to the employer under paragraph (15) during the 12 calendar quarters ending on such June 30 by the employer's 3-year compensation base as of such June 30 as computed under paragraph (3).

(3) 3-YEAR COMPENSATION BASE.—An employer's 3-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the employer under this subsection in the 12 calendar quarters ending on such June 30.

(4) RESERVE RATIO.—An employer's reserve ratio as of any given June 30 shall be computed by dividing the employer's reserve balance as of such June 30, as computed under paragraph (6), by that employer's 1-year compensation base as of such June 30, as computed under paragraph (5). The employer's reserve ratio may be either a positive or a negative figure, depending upon whether the employer's reserve balance is a positive or negative figure.

(5) 1-YEAR COMPENSATION BASE.—An employer's 1-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the employer under this subsection in the 4 calendar quarters ending on such June 30.

(6) RESERVE BALANCE.—An employer's reserve balance as of any given June 30 shall be determined by subtracting the employer's cumulative benefit balance as of such June 30, computed under paragraph (7), from the employer's net cumulative contribution balance as of such June 30, computed under paragraph (8). An employer's reserve balance may be either positive or negative, depending upon whether or not that employer's net cumulative contribution balance exceeds the employer's cumulative benefit balance.

(7) CUMULATIVE BENEFIT BALANCE.—An employer's cumulative benefit balance as of any given June 30 shall be determined by adding—

(A) the net amount of the benefits charged to the employer under paragraph (15) on or after January 1, 1990; and

(B) the cumulative amount of the employer's unallocated charges for the same period, if any, as computed under paragraph (9).

(8) NET CUMULATIVE CONTRIBUTION BALANCE.—An employer's net cumulative contribution balance as of any given June 30 shall be determined as follows:

(A) STEP 1.—Compute the sum of

(i) all contributions paid by the employer pursuant to this subsection;

(ii) that portion of the tax imposed under section 3321(a) of the Internal Revenue Code of 1986 that is attributable to the surtax rate under section 516(b)[1] of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988; and

(iii) any taxes paid by the employer pursuant to section 3321(a) of the Internal Revenue Code of 1986 (after the outstanding balance of loans made under section 10(d) before October 1, 1985, plus interest, have been paid);

on or after January 1, 1990.

(B) STEP 2.—Subtract an amount equal to the amount of such contributions deposited to the credit of the fund under subsection (i).

(C) STEP 3.—Add an amount equal to the aggregate amount by which such contributions were reduced in prior calendar years as a result of pooled credits, if any, under paragraph (1)(C)(iii).

(9) UNALLOCATED CHARGE.—An employer's unallocated charge as of any given June 30 is the amount that as of such June 30 bears the same ratio to the system unallocated charge balance, computed under paragraph (10), as the employer's 1-year compensation base, computed under paragraph (5), bears to the system compensation base computed under paragraph (11).

(10) SYSTEM UNALLOCATED CHARGE BALANCE.—The system unallocated charge balance as of any given June 30 shall be determined as follows:

(A) STEP 1.—Compute the aggregate amount of all interest paid by the account on loans from the Railroad Retirement Account after September 30, 1985, pursuant to section 10(d), during the 4 calendar quarters ending on that June 30.

(B) STEP 2.—Add the aggregate amount of any additions to the system unallocated charge balance specified in paragraphs (15) and (16), during that period.

(C) STEP 3.—Add the aggregate amount of any other expenditures by the account during that period not chargeable to any individual employer under paragraph (15) or to the fund under section 11.

(D) STEP 4.—Subtract the aggregate amount of all income to the account, under section 10(a)(iv) or section 10(a)(vii), during that period.

(E) STEP 5.—Subtract the aggregate amount of all transfers to the account, pursuant to section 11(d), during that period.

(F) STEP 6.—Subtract the aggregate amount of all other income and receipts of the account, during that pe-

[1] So in law. Probably should be section "7106(b)".

riod, which are not assigned to individual employer balances.

(G) STEP 7.—Subtract the net cumulative contribution balance of each employer whose balance has been cancelled pursuant to paragraph (16), during that period, calculated as of the date of such cancellation.

(11) SYSTEM COMPENSATION BASE.—The system compensation base as of any given June 30 shall be determined by adding together the amounts of the 1-year compensation bases of all employers and employee representatives subject to this Act, computed in accordance with paragraph (5), as of such June 30.

(12) POOLED CREDIT RATIO.—The pooled credit ratio, if any, for a calendar year shall be determined as follows:

(A) STEP 1.—Compute the balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made under section 10(d) before October 1, 1985, but disregarding the obligation to repay such loans and interest thereon. In determining such balance as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date as is in excess of $6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a pooled credit ratio for the calendar year only if that balance is in excess of the greater of $250,000,000 or of the amount that bears the same ratio to $250,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11).

(B) STEP 2.—If there is such an excess amount, divide that excess amount by the system compensation base as of the June 30 preceding the calendar year. The result is the pooled credit ratio for the calendar year.

(13) POOLED CHARGE RATIO.—The pooled charge ratio, if any, for a calendar year shall be determined as follows:

(A) STEP 1.—With respect to each employer whose contribution rate for that calendar year as computed through step 6 under paragraph (1)(C) was greater than the maximum contribution limit computed under paragraph (20), multiply the employer's 1-year compensation base as of the preceding June 30, as computed in accordance with paragraph (5), by the difference between—

(i) the percentage rate determined under subparagraph (B), (C), or (D) of paragraph (1) before the reduction to the maximum contribution limit; and

(ii) the maximum contribution limit.

(B) STEP 2.—Add the amounts arrived at under step 1 so as to obtain an aggregate amount for all such employers.

(C) STEP 3.—For each employer whose contribution rate as computed through step 3 under paragraph (1)(C) was less than 0, the percentage rate by which such em-

ployer's rate was raised in order to bring that rate to 0 shall be multiplied by that employer's 1-year compensation base as of the preceding June 30. Subtract the total of the amounts computed under the preceding sentence for all employers from the amount arrived at in step 2.

(D) STEP 4.—Divide the aggregate amount arrived at under step 3 by the system compensation base as of the preceding June 30 as computed under paragraph (11) minus the one-year compensation base of those employers whose rates computed through step 6 of paragraph (1)(C) exceeded the maximum contribution rate computed under paragraph (20). The result is the pooled charge ratio for the calendar year.

(14) SURCHARGE RATE.—The surcharge rate for a calendar year, if any, shall be determined as follows:

(A) STEP 1.—Compute the balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made under section 10(d) before October 1, 1985, but disregarding the obligation to repay such loans and interest thereon. In determining such balance as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date as is in excess of $6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a surcharge rate for the calendar year only if that balance is less than the greater of $100,000,000 or of the amount that bears the same ratio to $100,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11).

(B) STEP 2.—(i) If the balance to the credit of the account is less than the greater of the amounts referred to in the 2nd sentence of step 1 but is equal to or more than the greater of $50,000,000 or of the amount that bears the same ratio to $50,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, then the surcharge rate for the calendar year shall be 1.5 percent.

(ii) If the balance to the credit of the account is less than the greater of the amounts referred to in the clause (i), but greater than or equal to zero, then the surcharge rate for the calendar year shall be 2.5 percent.

(iii) If the balance to the credit of the account is less than zero, the surcharge rate for the calendar year shall be 3.5 percent.

(15) CHARGEABLE BENEFITS.—

(A) IN GENERAL.—Beginning January 1, 1990, all benefits paid to an employee for days of unemployment or days of sickness shall be charged to that employee's base year employer by adding amounts equal to the amounts of such benefits to the employer's cumulative benefit balance except that benefits paid by reason of strikes or work stop-

pages growing out of labor disputes shall not be added to the employer's cumulative benefit balance but instead shall be added to the system unallocated charge balance.

(B) ADJUSTMENTS.—A sum equal to each amount realized in recovery for overpayment, erroneous payment, or reimbursement of benefits and credited to the account pursuant to section 10(a)(v) or 10(a)(viii) shall be subtracted from the cumulative benefit balances of the employers of the employees to whom such an amount was paid as a benefit in the proportion to the amount by which each such employer's cumulative benefit balance was increased as a result of the payment of the benefit.

(C) MULTIPLE EMPLOYERS.—

(i) IN GENERAL.—All benefits paid to an employee who had more than 1 base-year employer shall be charged to the cumulative benefit balances of the employee's base year employers—

(I) in reverse chronological order of the employee's employment with each such employer in the base year if the employer at the time of the claim was the last base year employer, and the amount charged to each employer shall not exceed the compensation paid by that employer to the employee in the base year; and

(II) in all other cases, in the same ratio as the compensation paid to such employee by the employer bears to the total of such compensation paid to such employee by all such employers in the base year.

(ii) SPECIAL RULE FOR EMPLOYER WITH CANCELLED BALANCES.—All benefits chargeable under this subparagraph to an employer for which the Board has cancelled balances under paragraph (16) shall be added to the system unallocated charge balance.

(16) DEFUNCT EMPLOYER.—Whenever the Board determines, pursuant to such regulations as the Board may prescribe, that an employer has permanently ceased to pay compensation with respect to which contributions are payable pursuant to this subsection, the Board shall, effective on the date of the Board's determination, transfer the employer's net cumulative contribution balance as a subtraction from, and cumulative benefit balance as an addition to, the system unallocated charge balance and cancel all other accumulations of the employer.

(17) INDIVIDUAL EMPLOYER RECORD.—

(A) IN GENERAL.—As of January 1, 1990, the Board shall commence maintaining an individual employer record with respect to each employer, and the records necessary to determine pooled charges, pooled credits and unallocated charge balances for the system. Whenever a new employer begins paying compensation with respect to which contributions are payable pursuant to this subsection, the Board shall establish and maintain an individual employer record for such employer.

(B) DEFINITION.—As used in this paragraph, the term "individual employer record" means a record of an individual employer's benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, reserve balance, net cumulative contribution balance, and cumulative benefit balance.

(18) JOINT EMPLOYER RECORDS.—Pursuant to regulations prescribed by the Board, the Board may allow 2 or more employers, upon application, to establish and maintain, or to discontinue, a joint individual employer record for such employers as though such joint record constituted a single employer's individual employer record.

(19) MERGERS, CONSOLIDATIONS, OR OTHER CHANGES IN EMPLOYER IDENTITY.—

(A) WITH OTHER EMPLOYERS.—In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another employer and the combination entails no partitioning of the property of the employer, the individual employer records of the 2 employers shall be combined into a joint individual employer record if the parties request such joint treatment pursuant to paragraph (18) or if the Board otherwise determines, pursuant to regulations prescribed by the Board, that such joint treatment is desirable.

(B) WITH NONEMPLOYERS.—In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another entity that is not an employer, the employer's individual employer record shall attach to the combined entity.

(C) SALE OF ASSETS.—In the event property of an employer is sold or transferred to another employer or other entity, or is partitioned among 2 or more employers or entities, the cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of the employer shall be prorated among the employers which receive the property, including any entities which become employers by virtue of such transfer or partition, in such equitable manner as the Board by regulation shall prescribe.

(D) REINCORPORATION.—The cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of an employer that reincorporates or otherwise alters its corporate identity in a transaction not involving a merger, consolidation, or unification shall attach to the reincorporated or altered entity.

(E) ABANDONMENT.—If an employer abandons property or discontinues service but continues to operate as an employer, the employer's individual employer record shall continue to be calculated as provided in this subsection without retroactive adjustment.

(20) MAXIMUM CONTRIBUTION LIMIT.—The maximum contribution limit with respect to a calendar year is 12 percent, unless a 3.5 percent surcharge under paragraph (14) is in ef-

fect with respect to that calendar year. If such a surcharge is in effect the maximum contribution limit with respect to that calendar year is 12.5 percent.

(21) SPECIAL RULES FOR CERTAIN COMPUTATIONS UNDER PARAGRAPH (1)(C).—(A) Any computation that is to be made under paragraph (1)(C) on the basis of a 12-quarter period ending on a given June 30 shall be made on the basis of a period—

(i) beginning on the later of—

(I) January 1, 1990;

(II) the first day of the first calendar quarter that begins after the date on which the employer first began to pay compensation subject to this Act; or

(III) July 1 of the third calendar year preceding that June 30; and

(ii) ending on that June 30.

(B) The amount computed under subparagraph (A) shall be increased to an amount that bears the same ratio to the amount so computed as 12 bears to the number of calendar quarters on which the computation is based.

(b) EMPLOYEE REPRESENTATIVE CONTRIBUTION.—Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative as is not in excess of the monthly compensation base computed in accordance with section 1(i), at a rate which shall be determined under subsection (a) in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this Act.

(c) BOARD PROCLAMATION OF BALANCE.—

(1) IN GENERAL.—Not later than October 15, 1990, and October 15 of each year thereafter the Board shall proclaim—

(A) the balance to the credit of the account as of the preceding June 30 for purposes of paragraphs (12) and (14) of subsection (a);

(B) the balance of any advances to the account under section 10(d) after September 30, 1985, that has not been repaid with interest as provided in such section as of September 30 of that year;

(C) the system compensation base as of that June 30 as computed in accordance with paragraph (11) of that subsection;

(D) the system unallocated charge balance as of that June 30, as computed in accordance with paragraph (10) of that subsection; and

(E) the pooled credit ratio, the pooled charge ratio, and the surcharge rate, if any, as determined under paragraph (12), (13), or (14) of that subsection and applicable in the following calendar year.

(2) PUBLICATION OF NOTICE.—As soon as is practicable after such proclamation, the Board shall publish notice in the Federal Register of the amounts so determined and proclaimed.

(d) NOTIFICATIONS BY BOARD.—(1) Not later than the last day of any calendar quarter that begins after March 31, 1990, the

Board shall notify each employer and employee representative of its net cumulative contribution balance and cumulative benefit balance as of the end of the preceding calendar quarter, as computed in accordance with paragraphs (7) and (8) of subsection (a) as of the last day of such preceding calendar quarter rather than as of a given June 30 if such last day is not a June 30.

(2) Not later than October 15, 1990, and October 15 of each year thereafter, the Board shall notify each employer and employee representative of its benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, and reserve balance as of the preceding June 30 as computed in accordance with paragraphs (2), (3), (4), (5), (6), and (9) of subsection (a), and of the contribution rate applicable to the employer or employee representative in the following calendar year as computed under paragraphs (1) (B), (C), or (D) of that subsection.

(e) INFORMATION TO VERIFY ACCURACY TO BE MADE AVAILABLE.—Notwithstanding any other provision of law, upon request by an employer or employee representative, the Board shall make available to such employer or employee representative any information available to the Board which may be necessary to verify the accuracy of a contribution rate determined by the Board to be applicable to such employer or employee representative, or of any component of that contribution rate including the accuracy of the employer's individual employer record, upon payment by such employer or employee representative to the Board of the cost incurred by the Board in making such information available. The amounts so paid to the Board shall be credited to and deposited in the fund.

(f) In the payment of any contribution under this Act, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(g) If more or less than the correct amount of the contribution required by this section is paid with respect to any compensation, then, under regulations prescribed under this Act by the Board, proper adjustments with respect to the contributions shall be made, without interest, in connection with subsequent contribution payments made under this Act by the same employer or employee representative.

(h) If more or less than the correct amount of the contribution required by this section is paid with respect to any compensation and the overpayment or underpayment of the contribution cannot be adjusted under subsection (d) of this section, the amount of the overpayment shall be refunded from the account, or the amount of the underpayment shall be collected, in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations of the Board.

(i) The contributions required by this Act shall be collected by the Board and shall be deposited by it with the Secretary of the Treasury of the United States, such part thereof as equals 0.65 per centum of the total compensation on which such contributions are based to be deposited to the credit of the fund and the balance to be deposited to the credit of the account.

(j) The contributions required by this Act shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this Act as may be pre-

scribed by regulations of the Board, and shall not be deducted, in whole or in part, from the compensation of employees in the employer's employ. If a contribution required by this Act is not paid when due, there shall be added to the amount payable (except in the case of adjustments made in accordance with the provisions of this Act) interest at the rate of 1 per centum per month or fraction of a month from the date the contribution became due until paid. Any interest collected pursuant to this subsection shall be credited to the account.

(k) All provisions of law, including penalties, applicable with respect to any tax imposed by the provisions of the Railroad Retirement Tax Act, insofar as applicable and not inconsistent with the provisions of this Act, shall be applicable with respect to the contributions required by this Act: *Provided,* That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions, be vested in and exercised by the Board or such officers and employees of the Board as it may designate therefor. The remedies available under the first sentence of this subsection for an employer or employee representative who contests the amount of contributions payable by him shall also apply with respect to a contention that the contribution rate determined by the Board under subsection (a) or (b) to be applicable to such employer or employee representative is inaccurate or otherwise improper.

(45 U.S.C. 358)

PENALTIES

SEC. 9. (a) Any officer or agent of an employer, or any employee representative, or any employee acting in his own behalf, or any person whether or not of the character hereinbefore defined, who shall willfully fail or refuse to make any report or furnish any information required by the Board in the administration of this Act, or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purposes of this Act, or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or claim for the purpose of causing benefits or other payment to be made or not to be made under this Act, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(b) Any agreement by an employee to pay all or any portion of the contribution required of his employer under this Act shall be void, and it shall be unlawful for any employer, or officer or agent of an employer, to make, require, or permit any employee to bear all or any portion of such contribution. Any employer, or officer or agent of an employer, who violates any provison of this subsection shall be punished for each such violation by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(c) Any person who violates any provisions of this Act, the punishment for which is not otherwise provided, shall be punished for

each such violation by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

(d) All fines and penalties imposed by a court pursuant to this Act shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the account.

(45 U.S.C. 359)

RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

SEC. 10. (a) The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act an account to be known as the railroad unemployment insurance account. This account shall consist of (i) such part of all contributions collected pursuant to section 8 of this Act as is in excess of 0.65 per centum of the total compensation on which such contributions are based, together with all interest collected pursuant to section 8(g) of this Act; (ii) all amounts transferred or paid into the account pursuant to section 13 or section 14 of this Act; (iii) all additional amounts appropriated to the account in accordance with any provision of this Act or with any provision of law now or hereafter adopted; (iv) a proportionate part of the earnings of the unemployment trust fund, computed in accordance with the provisions of section 904(e) of the Social Security Act; (v) all amounts realized in recoveries for overpayments or erroneous payments of benefits; (vi) all amounts transferred thereto pursuant to section 11 of this Act; (vii) all fines or penalties collected pursuant to the provisions of this Act; and (viii) all amounts credited thereto pursuant to section 2(f) or section 12(g) of this Act. Notwithstanding any other provision of law, all moneys credited to the account shall be mingled and undivided, and are hereby permanently appropriated to the Board to be continuously available to the Board without further appropriation, for the payment of benefits and refunds under this Act, and no part thereof shall lapse at any time, or be carried to the surplus fund or any other fund.

(b) All moneys in the account shall be used solely for the payment of the benefits and refunds provided for by this Act. The Board shall, from time to time, certify to the Secretary of the Treasury the name and address of each person or company entitled to receive benefits or a refund payment under this Act, the amount of such payment, and the time at which it shall be made. Prior to audit or settlement by the General Accounting Office, the Secretary of the Treasury, through the Division of Disbursements of the Treasury Department, shall make payments from the account directly to such person or company of the amount of benefits or refund so certified by the Board: *Provided, however,* That if the Board shall so request, the Secretary of the Treasury, through the Division of Disbursements of the Treasury Department, shall transmit benefits payments to the Board for distribution by it through employment offices or in such other manner as the Board deems proper.

(c) The Board shall include in its annual report to Congress a statement with respect to the status and operation of the account.

(d) Whenever the Board finds at any time that the balance in the railroad unemployment insurance account will be insufficient to pay the benefits and refunds which it estimates are due, or will become due, under this Act, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the railroad unemployment insurance account such moneys as the Board estimates would be necessary for the payment of such benefits and refunds, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the railroad unemployment insurance account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such benefits and refunds, it shall request the Secretary of the Treasury to retransfer from the railroad unemployment insurance account to the credit of the Railroad Retirement Account such moneys as in its judgment are not needed for the payment of such benefits and refunds, plus interest at a rate for each fiscal year equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer. In determining the balance in the railroad unemployment insurance account as of September 30 of any year pursuant to section 8(a) of this Act, any moneys transferred from the Railroad Retirement Account to the credit of the railroad unemployment insurance account which have not been retransferred as of such date from the latter account to the credit of the former, plus the interest accrued thereon to that date, shall be disregarded.

(e) Section 904(a) of the Social Security Act is hereby amended to read as follows: "There is hereby established in the Treasury of the United States a trust fund to be known as the 'unemployment trust fund', hereinafter in this title called the 'fund'. The Secretary of the Treasury is authorized and directed to receive and hold in the fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury or with any Federal Reserve Bank or member bank of the Federal Reserve System designated by him for such purpose."

(f) Section 904(e) of the Social Security Act is hereby amended to read as follows: "The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund, and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date."

(g) Section 904(f) of the Social Security Act is hereby amended by adding thereto the following sentence: "The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the payment of

benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment."

(45 U.S.C. 360)

RAILROAD UNEMPLOYMENT INSURANCE ADMINISTRATION FUND

SEC. 11. (a) The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act an account to be known as the railroad unemployment insurance administration fund. This unemployment insurance administration fund shall consist of (i) such part of all contributions collected pursuant to section 8 of this Act as equals 0.65 per centum of the total compensation on which such contributions are based; (ii) all amounts advanced to the fund by the Secretary of the Treasury pursuant to this section; (iii) all amounts appropriated by subsection (b) of this section; and (iv) such additional amounts as Congress may appropriate for expenses necessary or incidental to administering this Act. Such additional amounts are hereby authorized to be appropriated.

(b) In addition to the other moneys herein provided for expenses necessary or incidential to administering this Act, there is hereby appropriated to the fund such amount as the Secretary of the Treasury and the Board shall jointly estimate to have been collected or to be collectible with respect to the calendar years 1936, 1937, 1938, and 1939, from employers subject to this Act, under title IX of the Social Security Act, less such amount as the Secretary of the Treasury and the Board shall jointly estimate will be appropriated or have been appropriated to States or territories pursuant to the Act of Congress approved August 24, 1937 (Public, Numbered 353, Seventy-fifth Congress), as proceeds of taxes paid by employers pursuant to title IX of the Social Security Act.

Until the amount appropriated by this subsection is credited to the fund, the Secretary of the Treasury is hereby directed to advance to the credit of the fund such sums, but not more than $2,000,000 as the Board requests for the purpose of financing the cost of administering this Act. Such advance shall be repaid from the fund at such time after the amount appropriated by this subsection is credited to the funds as the Board by agreement with the Secretary of the Treasury may determine, but not later than January 1, 1940.

(c) Notwithstanding any other provision of law, all moneys at any time credited to the fund are hereby permanently appropriated to the Board to be continuously available to the Board without further appropriation for any expenses necessary or incidental to administering this Act, including personal services in the District of Columbia and elsewhere; travel expenses, including expenses of attendance at meetings when authorized by the Board; actual transportation expenses and not to exceed $10 per diem to cover subsistence and other expenses while in attendance at and en route to and from the place to which he is invited, to any person other than an employee of the Federal Government who may, from time

to time, be invited to the city of Washington or elsewhere for conference or advisory purposes in furthering the work of the Board; when found by the Board to be in the interest of the Government, not exceeding 3 per centum, in any fiscal year, of the amounts credited during such year to the fund, for engaging persons or organizations, by contract or otherwise, for any special technical or professional service, determined necessary by the Board, including but not restricted to accounting, actuarial, statistical, and reporting services, without regard to section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5) and the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; services; advertising, postage, telephone, telegraph, teletype, and other communication services and tolls; supplies; reproducing, photographing, and all other equipment, office appliances, and labor-saving devices, including devices for internal communication and conveyance; purchase and exchange, operation, maintenance and repair of motor-propelled passenger-carrying vehicles to be used only for official purposes in the District of Columbia and in the field; printing and binding; purchase and exchange of law books, books of reference, and directories; periodicals, newspapers and press clippings, in such amounts as the Board deems necessary, without regard to the provisions of section 192 of the Revised Statutes; manuscripts and special reports; membership fees or dues in organizations which issue publications to members only, or to members at a lower price than to others, payment for which may be made in advance; rentals, including garages, in the District of Columbia or elsewhere; alterations and repairs; if found by the Board to be necessary to expedite the certification to the Board by the Civil Service Commission of persons eligible to be employed by the Board, and to the extent that the Board finds such expedition necessary, meeting the expenses of the Civil Service Commission in holding examinations for testing the fitness of applicants for admission to the classified service for employment by the Board pursuant to the second paragraph of section 12(l) of this Act, but not to exceed the additional expenses found by the Board to have been incurred by reason of the holding of such examinations; and miscellaneous items, including those for public instruction and information deemed necessary by the Board: *Provided,* That section 3709 of Revised Statutes (U.S.C., title 41, sec. 5) shall not be construed to apply to any purchase or procurement of supplies or services by the Board from moneys in the fund when the aggregate amount involved does not exceed $300. Determinations of the Board whether the fund or an appropriation for the administration of the Railroad Retirement Act of 1974 is properly chargeable with the authorized expenses, or parts thereof, incurred in the administration of such Act, or of this Act, shall be binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner.

(d) So much of the balance in the fund as of September 30 of each year as is in excess of $6,000,000 shall as of such date be transferred from the fund and credited to the account.

(45 U.S.C. 361)

DUTIES AND POWERS OF THE BOARD

SEC. 12. (a) For the purpose of any investigation or other proceeding relative to the determination of any right to benefits, or relative to any other matter within its jurisdiction under this Act, the Board shall have the power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence, documentary or otherwise, that relates to any matter under investigation or in question, before the Board or any member, employee, or representative thereof. Any member of the Board or any of its employees or representatives designated by it may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and production of evidence may be required from any place in the United States or any Territory or possession thereof at any designated place of hearing. All subpenas may be served and returned by any one authorized by the Board in the same manner as is now provided by law for the service and return by United States marshals of subpenas in suits in equity. Such service may also be made by registered mail or by certified mail and in such case the return post office receipt shall be proof of service. Witnesses summoned in accordance with this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(b) In case of contumacy by, or refusal to obey a subpena lawfully issued to, any person, the Board may invoke the aid of the district court of the United States or the United States courts of any Territory or possession, where such person is found or resides or is otherwise subject to service of process; or the District Court of the United States for the District of Columbia if the investigation or proceeding is being carried on in the District of Columbia, or the District Court of the United States for the Northern District of Illinois, if the investigation or proceeding is being carried on in the Northern District of Illinois, in requiring the attendance and testimony of witnesses and the production of evidence. Any such court shall issue an order requiring such person to appear before the Board or its specified employee or representative at the place specified in the subpena of the Board, whether within or without the judicial district of the court, there to produce evidence, if so ordered, or there to give testimony concerning the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. All orders, writs, and processes in any such proceeding may be served in the judicial district of the district court issuing such order, writ, or process, except that the orders, writs, and processes of the District Court of the United States for the District of Columbia or of the District Court of the United States for the Northern District of Illinois in such proceedings may run and be served anywhere in the United States.

[(c) Repealed by Public Law 91–452, 1970.]

(d) Information obtained by the Board in connection with the administration of this Act shall not be revealed or open to inspection nor be published in any manner revealing an employee's identity: *Provided, however,* That (i) the Board may arrange for the exchange of any information with governmental agencies engaged in

functions related to the administration of this Act; (ii) the Board may disclose such information in cases in which the Board finds that such disclosure is clearly in furtherance of the interest of the employee or his estate; (iii) any claimant of benefits under this Act shall, upon his request, be supplied with information from the Board's records pertaining to his claim and (iv) the Board shall disclose to any base-year employer of a claimant for benefits any information, including information as to the claimant's identity, that is necessary or appropriate to notify such employer of the claim for benefits or to full and fair participation by such employer in an appeal, hearing, or other proceeding relative to the claim pursuant to section 5 of this Act; Subjects to the provisions of this section, the Board may furnish such information to any person or organization upon payment by such person or organization to the Board of the cost incurred by the Board by reason thereof; and the amounts so paid to the Board shall be credited to the railroad unemployment insurance administration fund established pursuant to section 11(a) of this Act.

(e) The Board shall provide for the certification of claims for benefits and refunds and may arrange total or partial settlements at such times and in such manner as may appear to the Board to be expedient. The Board shall designate and authorize one or more of its employees to sign vouchers for the payment of benefits and refunds under this Act. Each such employee shall give bond, in form and amount fixed by the Board, conditioned upon the faithful performance of his duties. The premiums due on such bonds shall be paid from the fund and deemed to be part of the expenses of administering this Act.

(f) The Board may cooperate with or enter into agreement with the appropriate agencies charged with the administration of State, Territorial, Federal, or foreign unemployment-compensation of sickness laws or employment offices, with respect to investigations, the exchange of information and services, the establishment, maintenance, and use of free employment service facilities, and such other matters as the Board deems expedient in connection with the administration of this Act, and may compensate any such agency for services or facilities supplied to the Board in connection with the administration of this Act. The Board may enter also into agreement with any such agency, pursuant to which any unemployment or sickness benefits provided for by this Act or any other unemployment-compensation or sickness law, may be paid through a single agency to persons who have, during the period on the basis of which eligibility for and duration of benefits is determined under the law administered by such agency or under this Act, or both, performed services covered by one or more of such laws, of performed services which constitute employment as defined in this Act: *Provided,* That the Board finds that any such agreement is fair and reasonable as to all affected interests.

(g) In determining whether an employee has qualified for benefits in accordance with section 3 of this Act, and in determining the amounts of benefits to be paid to such employee in accordance with sections 2(a) and 2(c) of this Act, the Board is authorized to consider as employment (and compensation therefor) services for hire other than employment (and remuneration therefor) if such serv-

ices for hire are subject to an unemployment or sickness compensation law of any State, provided that such State has agreed to reimburse the United States such portion of the benefits to be paid upon such basis to such employee as the Board deems equitable. Any amounts collected pursuant to this paragraph shall be credited to the account.

If a State, in determining whether an employee is eligible for unemployment or sickness benefits under an unemployment or sickness compensation law of such State, and in determining the amount of unemployment or sickness benefits to be paid to such employee pursuant to such unemployment or sickness compensation law, considers as services for hire (and remuneration therefor) included within the provisions of such unemployment or sickness compensation law, employment (and compensation therefor), the Board is authorized to reimburse such State such portion of such unemployment or sickness benefits as the Board deems equitable; such reimbursements shall be paid from the account, and are included within the meaning of the word "benefits" as used in this Act.

(h) The Board may enter into agreements or arrangements with employers, organizations or employers, and railway-labor organizations which are duly organized in accordance with the provisions of the Railway Labor Act, for securing the performance of services or the use of facilities in connection with the administration of this Act, and may compensate any such employer or organization therefor upon such reasonable basis as the Board shall prescribe, but not to exceed the additional expense incurred by such employer or organization by reason of the performance of such services or making available the use of such facilities pursuant to such agreements or arrangements. Such employers and organizations, and persons employed by either of them, shall not be subject to the Act of Congress approved March 3, 1917 (39 Stat. 1106, ch. 163, sec. 1).

(i) The Board may establish, maintain, and operate free employment offices, and may designate as free employment offices facilities maintained by (i) a railway labor organization which is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or (ii) any other labor organization which has been or may be organized in accordance with the provisions of the Railway Labor Act, or (iii) one or more employers, or (iv) an organization of employers, or (v) a group of such employers and labor organizations, or (vi) a State, Territorial, foreign, or the Federal Government. The Board may also enter into agreements or arrangements with one or more employers or railway labor organizations organized in accordance with the provisions of the Railway Labor Act, pursuant to which notice of the availability of work and the rights of employees with respect to such work under agreements between such employers and railway labor organizations may be filed with employment offices and pursuant to which employees registered with employment offices may be referred to such work.

The Board shall prescribe a procedure for registration of unemployed employees at employment offices. Such procedure for registration shall be prescribed with a view to such registration afford-

ing substantial evidence of the days of unemployment of the employees who register. The Board may, when such registration is made personally by an employee, accept such registration as initial proof of unemployment sufficient to certify for payment a claim for benefits.

The Board shall provide a form or forms for statements of sickness and a procedure for the execution and filing thereof. Such forms and procedure shall be designed with a view to having such statements provide substantial evidence of the days of sickness of the employee. Such statements may be executed by any doctor (authorized to practice in the State or foreign jurisdiction in which he practices his profession) or any officer or supervisory employee of a hospital, clinic, group health association, or other similar organization, who is qualified under such regulations as the Board may prescribe to execute such statements. The Board shall issue regulations for the qualification of such persons to execute such statements. When so executed by any such person, or, in the discretion of the Board, by others designated by the Board individually or by groups, they may be accepted as initial proof of days of sickness sufficient to certify for payment a claim for benefits.

The regulations of the Board concerning registration at employment offices by unemployed persons may provide for group registration and reporting, through employers, and need not be uniform with respect to different classes of employees.

The operation of any employment facility operated by the Board shall be directed primarily toward the reemployment of employees who have therefore been substantially employed by employers.

(j) The Board may appoint national or local advisory councils composed of equal numbers of representatives of employers, representatives of employees, and persons representing the general public, for the purpose of discussing problems in connection with the administration of this Act and aiding the Board in formulating policies. The members of such councils shall serve without remuneration, but shall be reimbursed for any necessary traveling and subsistence expenses or on a per diem basis in lieu of subsistence expenses.

(k) The Board, with the advice and aid of any advisory council appointed by it, shall take appropriate steps to reduce and prevent unemployment and loss of earnings; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to promote the reemployment of unemployed employees; and to these ends to carry on and publish the results of investigations and research studies.

(l) In addition to the powers and duties expressly provided, the Board shall have and exercise all the powers and duties necessary to administer or incidental to administering this Act, and in connection therewith shall have such of the powers, duties, and remedies provided in subdivisions (5), (6), and (9) of section 7(b) of the Railroad Retirement Act of 1974, with respect to the administration of said Act, as are not inconsistent with the express provisions of this Act. A person in the employ of the Board under section 205 of the Act of Congress approved June 24, 1937 (50 Stat. 307), shall acquire a competitive classified civil-service status if, after rec-

ommendation by the Board to the Civil Service Commission, he shall pass such noncompetitive tests of fitness as the Civil Service Commission may prescribe. A person in the employ of the Board on June 30, 1939, and on June 30, 1940, and who has had experience in railroad service, shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Civil Service Commission, he shall pass such noncompetitive tests of fitness for the position for which the Board recommends him as the Civil Service Commission may prescribe.

The Board may employ such persons and provide for their remuneration and expenses, as may be necessary for the proper administration of this Act. Such persons shall be employed and their remuneration prescribed in accordance with the civil-service laws and the Classification Act of 1949, as amended: *Provided,* That all positions to which such persons are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom: *Provided,* That in the employment of such persons the Board shall give preference, as between applicants attaining the same grades, to persons who have had experience in railroad service, and notwithstanding any other provisions of law, rules, or regulations, no other preferences shall be given or recognized: *And provided further,* That certification by the Civil Service Commission of persons for appointment to any positions at minimum salaries of $4,600 per annum, or less, shall, if the Board so requests, be upon the basis of competitive examinations, written, oral or both, as the Board may request: *And provided further,* That for the purpose of registering unemployed employees who reside in areas in which no employer facilities are located, or in which no employer will make facilities available for the registration of such employees, the Board may, without regard to civil-service laws and the Classification Act of 1923, appoint persons to accept, in such areas, registration of such employees and perform services incidental thereto and may compensate such persons on a piece-rate basis to be determined by the Board. Notwithstanding the provisions of the Act of June 22, 1906 (34 Stat. 449), or any other provision of law, the Board may detail employees from stations outside the District of Columbia to other stations outside the District of Columbia or to service in the District of Columbia, and may detail employees in the District of Columbia to service outside the District of Columbia: *Provided,* That all details hereunder shall be made by specific order and in no case for a period of time exceeding one hundred and twenty days. Details so made may, on expiration be renewed from time to time by order of the Board, in each particular case, for periods not exceeding one hundred and twenty days.

(m) The Board is authorized to delegate to any member officer or employee of the Board any of the powers conferred upon the Board by this Act, excluding only the power to prescribe rules and regulations.

(n) Any employee claiming, entitled to, or receiving sickness benefits under this Act may be required to take such examination, physical, medical, mental, or otherwise, in such manner and at such times and by such qualified individuals, including medical

officers or employees of the United States or a State, as the Board may prescribe. The place or places of examination shall be reasonably convenient for the employee. No sickness benefits shall be payable under this Act with respect to any period during which the employee unreasonably refuses to take or willfully obstructs an examination as prescribed by the Board.

Any doctor who renders any attendance, treatment, attention, or care, or performs any examination with respect to a sickness of an employee, upon which a claim or right to benefits under this Act is based, shall furnish the Board, in such manner and form and at such times as the Board by regulations may prescribe information and reports relative thereto and to the condition of the employee. An application for sickness benefits under this Act shall contain a waiver of any doctor-patient privilege that the employee may have with respect to any sickness period upon which such application is based: *Provided,* That such information shall not be disclosed by the Board except in a proceeding relating to any claims for benefits by the employee under this Act.

The Board may enter into agreements or arrangements with doctors, hospitals, clinics, or other persons for securing the examination, physical, medical, mental or otherwise, of employees claiming, entitled to, or receiving sickness benefits under this Act and the performance of services or the use of facilities in connection with the execution of statements of sickness. The Board may compensate any such doctors, hospitals, clinics, or other persons upon such reasonable basis as the Board shall prescribe. Such doctors, hospitals, clinics, or other persons and persons employed by any of them shall not be subject to the Act of Congress approved March 3, 1917 (39 Stat. 1106, ch. 163, sec. 1). In the event that the Board pays for the physical or mental examination of an employee or for the execution of a statement of sickness and such employee's claim for benefits is based upon such examination or statement, the Board shall deduct from any sickness benefits payable to the employee pursuant to such claim such amount as, in the judgment of the Board, is a fair and reasonable charge for such examination or execution of such statement.

(o) Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suits, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

(p) The Board may, after hearing, disqualify any person from executing statements of sickness who the Board finds, (i) will have solicited, or will have employed another to solicit, for himself or for another the execution of any such statement, or (ii) will have made

false or misleading statements to the Board, to any employer, or to any employee, in connection with the awarding of any benefit under this Act, or (iii) will have failed to submit medical reports and records required by the Board under this Act, or will have failed to submit any other reports, records, or information required by the Board in connection with the administration of this Act or any other Act heretofore or hereafter administered by the Board, or (iv) will have engaged in any malpractice or other professional misconduct. No fees or charges of any kind shall accrue to any such person from the Board after his disqualification.

(q) The Board shall engage in and conduct research projects, investigations, and studies with respect to the cause, care, and prevention of, and benefits for, accidents and disabilities and other subjects deemed by the Board to be related thereto, and shall recommend legislation deemed advisable in the light of such research projects, investigations, and studies.

(r) DUTY OF BOARD TO MAKE CERTAIN COMPUTATIONS.—

(1) COMPENSATION BASE.—On or before December 1, 1988, and on or before December 1 of each year thereafter, the Board shall compute—

(A) in accordance with section 1(i), the monthly compensation base which shall be applicable with respect to months in the next succeeding calendar year; and

(B) the amounts described in section 1(k), section 2(c), section 3, and section 4(a–2)(i)(A) that are related to changes in the monthly compensation base.

(2) MAXIMUM DAILY BENEFIT RATE.—On or before June 1, 1989, and on or before June 1 of each year thereafter, the Board shall compute in accordance with section 2(a)(3) the maximum daily benefit rate which shall be applicable with respect to days of unemployment and days of sickness in registration periods beginning after June 30 of that year.

(3) NOTICE IN FEDERAL REGISTER AND TO EMPLOYERS.—Not later than 10 days after each computation made under this subsection, the Board shall publish notice in the Federal Register and shall notify each employer and employee representative of the amount so computed.

(45 U.S.C. 362)

EXCLUSIVENESS OF PROVISIONS; TRANSFERS FROM STATE UNEMPLOYMENT COMPENSATION ACCOUNTS TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

SEC. 13. (a) [Amends section 907(c) of the Social Security Act effective July 1, 1939.]

(b) By enactment of this Act the Congress makes exclusive provision for the payment of unemployment benefits for unemployment occurring after June 30, 1939, and for the payment of sickness benefits for sickness periods after June 30, 1947, based upon employment (as defined in this Act). No employee shall have or assert any right to unemployment benefits under an unemployment compensation law of any State with respect to unemployment occurring after June 30, 1939, or to sickness benefits under a sickness law of any State with respect to sickness periods occurring

after June 30, 1947, based upon employment (as defined in this Act). The Congress finds and declares that by virtue of the enactment of this Act, the application of State unemployment compensation laws after June 30, 1939, or of State sickness laws after June 30, 1947, to such employment, except pursuant to section 12(g) of this Act, would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce. In furtherance of such determination, after June 30, 1939, the term "person" as used in section 906 of the Social Security Act shall not be construed to include any employer (as defined in this Act) or any person in its employ: *Provided,* That no provision of this Act shall be construed to affect the payment of unemployment benefits with respect to any period prior to July 1, 1939, under an unemployment compensation law of any State based upon employment performed prior to July 1, 1939, and prior to such date employment as defined in this Act shall not constitute "Service with respect to which unemployment compensation is payable under an [or "service under any"] unemployment compensation system [or "plan"] established by an Act of Congress" [or "a law of the United States"] or "employment in interstate commerce, of an individual who is covered by an unemployment compensation system established directly by an Act of Congress," or any term of similar import, used in any unemployment compensation law of any State.

(c) The Social Security Board is hereby directed to determine for each State, after agreement with the Railroad Retirement Board, and after consultation with such State; the total (hereinafter referred to as the "preliminary amount") of (i) the amount remaining as the balances of reserve accounts of employers as of June 30, 1939, if the unemployment compensation law of such State provides for a type of fund known as "Reserve Accounts", plus (ii) if the unemployment compensation law of such State provides for a type of fund known as "Pooled Fund" or "Pooled Account", that proportion of the balance of such fund or account of such State as of June 30, 1939, as the amount of taxes or contributions collected from employers and their employees prior to July 1, 1939, pursuant to its unemployment compensation law and credited to such fund or account bears to all such taxes or contributions theretofore collected from all persons subject to its unemployment compensation law and credited to such fund or account; and the additional amounts (hereinafter referred to as the "liquidating amount") of taxes or contributions collected from employers and their employees from July 1, 1939 to December 31, 1939, pursuant to its unemployment compensation law.

(d) The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 302(a) of the Social Security Act to be necessary for the proper administration of each State's unemployment-compensation law, until an amount equal to its "preliminary amount" plus interest from July 1, 1939, at 2½ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment, has been so withheld from certification pursuant to this paragraph: *Provided, however,* That if a State shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legisla-

ture which begins after the approval of this Act, and (ii) July 1, 1939, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its "preliminary amount", no amount shall be withheld from certification for payment to such State pursuant to this paragraph.

The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 302(a) of the Social Security Act to be necessary for the proper administration of each State's unemployment compensation law, until an amount equal to its "liquidating amount" plus interest from January 1, 1940, at 2½ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment has been so withheld from certification pursuant to this paragraph: *Provided, however,* That if a State shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legislature which begins after the approval of this Act, and (ii) July 1, 1939, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its "liquidating amount", no amount shall be withheld from certification for payment to such State pursuant to this paragraph.

The withholdings from certification directed in each of the foregoing paragraphs of this subsection shall begin with respect to each State when the Social Security Board finds that such State is unable to avail itself of the conditions set forth in the proviso contained in such paragraph: *Provided, however,* That if the Social Security Board finds with respect to any State that such State (1) is unable to avail itself of such conditions solely by reason of prohibitions contained in the constitution of such State, as determined by a decision of the highest court of such State declaring invalid in whole or in part the action of the legislature of the State purporting to provide for transfers from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account, and (2) for similar reasons is unable to use amounts withdrawn from its account in the Unemployment Trust Fund for the payment of expenses incurred in the administration of its State unemployment compensation law, the Social Security Board shall not begin to withhold from certification to the Secretary of the Treasury for payment to such State the amounts determined by it pursuant to section 302 of the Social Security Act and to certify to the Secretary of the Treasury for payment into the railroad unemployment insurance account the amount so withheld from such State until July 1, 1944, or until a date one hundred and eighty days after the adjournment of the first session of the legislature of such State beginning after July 1, 1942, whichever date is the earlier, and then only if the Social Security Board finds that such State had not prior thereto effectively authorized and directed the Secretary of the Treasury to transfer from such State's account in the Unemployment Trust Fund to the railroad unemployment insurance account amounts equal to such State's "preliminary amount"

and "liquidating amount" less such parts thereof, if any, as the State may have, within the periods set forth in provisos contained in the first two paragraphs of this subsection, effectively authorized and directed the Secretary of the Treasury so to transfer, plus interest on such difference, if any, with respect to each amount at 2½ per centum per annum from the date the State's preliminary amount" or "liquidating amount", as the case may be, is determined by the Social Security Board; and with respect to any such State the amount withheld shall equal the State's "Preliminary amount" and "liquidating amount" less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection effectively authorized and directed the Secretary of the Treasury to transfer, plus interest from July 1, 1939, at 2½ per centum per annum on so much of the "preliminary amount" and "liquidating amount", as the case may be, as has not been so transferred or has not been used as the measure for withholding. An enactment of any State legislature providing for the transfer (from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account) of all interest earned upon contributions which are collected with respect to employment occurring after such enactment by such State pursuant to its unemployment compensation law and credited to its account in the Unemployment Trust Fund (until the total of such transfers equals the amounts which otherwise would be required to be withheld from certification under this subsection), shall be deemed an effective authorization and direction to the Secretary of the Treasury as required by this subsection; and for purposes of computing the interest to be so transferred, amounts withdrawn by such State from its account in the Unemployment Trust Fund after the date of such State enactment shall be considered to be first charged against the amounts credited to such State's account prior to the date of such State enactment: *Provided, however,* That if at any time after such enactment the provision for transfer therein contained for any reason fails to be operative to effect the transfers of interest as therein prescribed, and such State has not otherwise made an effective authorization and direction to the Secretary of the Treasury as required by this subsection, the Social Security Board shall immediately after such failure or, on the date otherwise provided in this subsection for the beginning of withholdings from certification, whichever is later, begin to make the withholding from certification provided for in this subsection in the same manner and to the same extent as if such enactment by such State had not been enacted, except that the amounts of the certifications withheld shall be reduced by the total amount, if any, which has been transferred from interest pursuant to such enactment.

(e) The transfers described in the provisos contained in the several paragraphs of subsection (d) of this section shall not be deemed to constitute a breach of the conditions set forth in sections 303(a)(5) and 903(a)(4) of the Social Security Act; nor shall the withdrawal by a State from its account in the unemployment trust fund of amounts, but not to exceed the total amount the Social Security Board shall have withheld from certification with respect to such State pursuant to subsection (d) of this section, be deemed

to constitute a breach of the conditions set forth in sections 303(a)(5) and 903(a)(4) of the Social Security Act, provided the moneys so withdrawn are expended solely for expenses which the Social Security Board determines to be necessary for the proper administration of such State's unemployment compensation law.

(f) The Social Security Board is authorized and directed to certify to the Secretary of the Treasury for payment, and the Secretary shall pay, into the railroad unemployment insurance account, such amounts as the Social Security Board withholds from certification pursuant to subsection (d) of this section and the appropriations authorized in section 301 of the Social Security Act shall be available for payments authorized by this subsection. The Secretary shall transfer from the account of a State in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund such amounts as the State authorizes and directs him so to transfer pursuant to subsection (d) of this section.

(g) Section 303 of the Social Security Act is hereby amended by adding thereto the following additional subsection:

"(c) The Board shall make no certification for payment to any State if it finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

"(1) That such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes; or

"(2) That such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law."

(45 U.S.C. 363)

DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT

SEC. 14. (a) [Amends section 1(b) of the District of Columbia Unemployment Insurance Act effective July 1, 1939.]

(b) The Secretary of the Treasury is authorized and directed to transfer from the account of the District of Columbia in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund, an amount equal to the "preliminary amount" and an amount equal to the "liquidating amount", wherever such amounts, respectively, have been determined, with respect to the District of Columbia, pursuant to section 13 of this Act.

(45 U.S.C. 364)

TRANSITIONAL PROVISIONS

SEC. 15. The restrictions in the second sentence of section 3(b) and in section 4(a)(v) of this Act, insofar as they involve the receipt of unemployment benefits under an unemployment compensation

law of any State, shall not be applicable to any day of unemployment which occurs after June 15, 1939, but before July 1, 1939.
(45 U.S.C. 365)

SEPARABILITY

SEC. 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.
(45 U.S.C. 366)

SHORT TITLE

SEC. 17. This Act may be cited as the "Railroad Unemployment Insurance Act.
(45 U.S.C. 367)

RAILWAY LABOR ACT

RAILWAY LABOR ACT

(as amended through October 1999)

AN ACT To provide for the prompt disposition of disputes between carriers and their employees and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any railroad subject to the jurisdiction of the Surface Transportation Board, any express company that would have been subject to subtitle IV of title 49, United States Code, as of December 31, 1995,,[1] and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the

[1] So in law. See the amendment made by section 1223 of P.L. 104–264.

District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Board pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Surface Transportation Board shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Board.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the United States District Court for the District of Columbia; and the term "court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act".

(45 U.S.C. 151)

GENERAL PURPOSES

SEC. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

(45 U.S.C. 151a)

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and main-

tain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof:

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated

representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, sev-

enth, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carriers' employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided,* That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided,* That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided,* That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended.

(45 U.S.C. 152)

NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

SEC. 3. First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees or through an officer or officers designated for that purpose by such board, trustee or trustees or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one voting representative on any division of the Board.

(c) Except as provided in the second paragraph of subsection (h) of this section, the national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one voting representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of a vacancy in any such office within thirty days after such vacancy occurs, the Meditation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of eight members, four of whom shall be selected and designated by the carriers and four of whom shall be selected and designated by the labor organizations, national in scope and organized in accordance with section 2 hereof and which represent employees in engine, train, yard, or hostling service: *Provided, however,* That each labor organization shall select and designate two members on the First Division and that no labor organization shall have more than one vote in any proceedings of the First Division or in the adoption of any award with respect to any dispute submitted to the First Division: *Provided further, however,* That the carrier members of the First Division shall cast no more than two votes in any proceedings of the division or in the adoption of any award with respect to any dispute submitted to the First Division.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all

hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board eligible to vote shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit

the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided, however,* That such order may not be set aside except for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28, United States Code.

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(t) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(u) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensation of such assist-

ants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(v) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(w) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

(x) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (l) hereof, with respect to a division of the Adjustment Board.

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board

of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisidiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situtations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the

petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

(45 U.S.C. 153)

NATIONAL MEDIATION BOARD

SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board", to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. Each member of the Mediation Board in office on January 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired. The terms of office of all successors shall expire three years after expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 [1] per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place

[1] Members of the Board are compensated at the rate of pay in effect for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923,[1] fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, and[2] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. All officers and employees of the Board of Mediation (except the members thereof, whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the

[1] Superseded by Classification Act of 1949 (P.L. 429, 21st Cong.) approved October 28, 1949.
[2] Probably should be "any".

Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

(45 U.S.C. 154)

FUNCTIONS OF MEDIATION BOARD

SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and

impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this Act for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgement of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new

contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

(45 U.S.C. 155)

SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

(45 U.S.C. 156)

ARBITRATION

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and

expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

(45 U.S.C. 157)

SEC. 8.[1] The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this Act;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

[1] Section 8 as contained in Railway Labor Act, approved May 20, 1926.

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or court of appeals of the United States, or before a member of the Mediation Board and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award; *Provided,* That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written

agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

(45 U.S.C. 158)

SEC. 8.[1] If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

SEC. 9. First, The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided, further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

[1] Section 8 as contained in Public Law No. 442, amendment to Railway Labor Act, approved June 21, 1934.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said court of appeals upon said questions shall be final, and being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

(45 U.S.C. 159)

SPECIAL PROCEDURE FOR COMMUTER SERVICE

SEC. 9A. (a) Except as provided in section 510(h) of the Rail Passenger Service Act, the provisions of this section shall apply to any dispute subject to this Act between a publicly funded and publicly operated carrier providing rail commuter service (including the Amtrak Commuter Services Corporation) and its employees.

(b) If a dispute between the parties described in subsection (a) is not adjusted under the foregoing provisions of this Act and the President does not, under section 10 of this Act, create an emergency board to investigate and report on such dispute, then any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish such an emergency board.

(c)(1) Upon the request of a party or a Governor under subsection (b), the President shall create an emergency board to investigate and report on the dispute in accordance with section 10 of this Act. For purposes of this subsection, the period during which no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose shall be 120 days from the date of the creation of such emergency board.

(2) If the President, in his discretion, creates a board to investigate and report on a dispute between the parties described in subsection (a), the provisions of this section shall apply to the same extent as if such board had been created pursuant to paragraph (1) of this subsection.

(d) Within 60 days after the creation of an emergency board under this section, if there has been no settlement between the

parties, the National Mediation Board shall conduct a public hearing on the dispute at which each party shall appear and provide testimony setting forth the reasons it has not accepted the recommendations of the emergency board for settlement of the dispute.

(e) If no settlement in the dispute is reached at the end of the 120-day period beginning on the date of the creation of the emergency board, any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish another emergency board, in which case the President shall establish such emergency board.

(f) Within 30 days after creation of a board under subsection (e), the parties to the dispute shall submit to the board final offers for settlement of the dispute.

(g) Within 30 days after the submission of final offers under subsection (f), the emergency board shall submit a report to the President setting forth its selection of the most reasonable offer.

(h) From the time a request to establish a board is made under subsection (e) until 60 days after such board makes its report under subsection (g), no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

(i) If the emergency board selects the final offer submitted by the carrier and, after the expiration of the 60-day period described in subsection (h), the employees of such carrier engage in any work stoppage arising out of the dispute, such employees shall not be eligible during the period of such work stoppage for benefits under the Railroad Unemployment Insurance Act.

(j) If the emergency board selects the final offer submitted by the employees and, after the expiration of the 60-day period described in subsection (h), the carrier refuses to accept the final offer submitted by the employees and the employees of such carrier engage in any work stoppage arising out of the dispute, the carrier shall not participate in any benefits of any agreement between carriers which is designed to provide benefits to such carriers during a work stoppage.

(45 U.S.C. 159a)

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall

investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

(45 U.S.C. 160)

GENERAL PROVISIONS

SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(45 U.S.C. 161)

SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

(45 U.S.C. 162)

SEC. 13. (a) Paragraph "Second" of subdivision (b) of section 128 of the Judicial Code, as amended, is amended to read as follows:

"Second. To review decisions of the district courts, under section 9 of the Railway Labor Act."

(b) Section 2 of the Act entitled "An Act to amend the Judicial Code, and to further define the jurisdiction of the court of appeals and of the Supreme Court, and for other purposes," approved February 13, 1925, is amended to read as follows:

"SEC. 2. That cases in a court of appeals under section 9 of the Railway Labor Act; under section 5 of 'An Act to create a Federal Trade Commission, to define its power and duties, and for other purposes,' approved September 26, 1914; and under section 11 of 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, are included among the cases to which sections 239 and 240 of the Judicial Code shall apply."

SEC. 14. Title III of the Transportation Act, 1920, and the Act approved July 15, 1913, providing for mediation, conciliation, and arbitration, and all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office upon the date of the passage of this Act shall receive their salaries for a period of 30 days from such date, in the same manner as though this Act had not been passed.

(45 U.S.C. 163)

TITLE II

SEC. 201. All of the provisions of title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

(45 U.S.C. 181)

SEC. 202. The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 1 thereof.

(45 U.S.C. 182)

SEC. 203. The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under this title in the same manner and to the same extent as are the disputes covered by section 5 of title I of this Act.

(45 U.S.C. 183)

SEC. 204. The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, title I, of this Act.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

(45 U.S.C. 184)

SEC. 205. When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is hereby empowered and directed, by its order duly made, published, and served, to direct the said carriers by air and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of this Act, to select and designate four representatives who shall constitute a board which shall be known as the "National Air Transport Adjustment Board". Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by title I of this Act for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 3 of title I of this Act. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 3 of title I of this Act. The powers and duties prescribed and established by the provisions of section 3 of title I of this Act with reference to the National Railroad Adjustment Board and the several divisions thereof are hereby conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment Board by the provisions of this title. From and after

the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or classes of its or their employees is not satisfactory to either party thereto, the said party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board.

(45 U.S.C. 185)

SEC. 206. All cases referred to the National Labor Relations Board, or over which the National Labor Relations Board shall have taken jurisdiction, involving any dispute arising from any cause between any common carrier by air engaged in interstate or foreign commerce or any carrier by air transporting mail for or under contract with the United States Government, and employees of such carrier or carriers, and unsettled on the date of approval of this Act, shall be handled to conclusion by the Mediation Board. The books, records, and papers of the National Labor Relations Board and of the National Labor Board pertinent to such case or cases, whether settled or unsettled, shall be transferred to the custody of the National Mediation Board.

SEC. 207. If any provision of this title or application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

(45 U.S.C. 187)

SEC. 208. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

(45 U.S.C. 188)

FEDERAL EMPLOYERS' LIABILITY ACT

FEDERAL EMPLOYERS' LIABILITY ACT

(as amended through January 1999)

AN ACT Relating to the liability of common carriers by railroad to their employees in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this Act, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this Act and of an Act entitled "An Act relating to the liability of common carriers by railroads to their employees in certain cases" (approved April 22, 1908), as the same has been or may hereafter be amended.

(45 U.S.C. 51)

SEC. 2. That every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence in its cars, engines, appliances,

machinery, track, roadbed, works, boats, wharves, or other equipment.

(45 U.S.C. 52)

SEC. 3. That in all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this Act to recover damages for personal injuries to an employee or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided,* That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(45 U.S.C. 53)

SEC. 4. That in any action brought against any common carrier under or by virtue of any of the provisions of this Act to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier; and no employee shall be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(45 U.S.C. 54)

SEC. 4A. A regulation, standard, or requirement in force, or prescribed by the Secretary of Transportation under chapter 201 of title 49, United States Code, or by a State agency that is participating in investigative and surveillance activities under section 20105 of title 49, is deemed to be a statute under sections 3 and 4 of this Act.

(45 U.S.C. 54a)

SEC. 5. That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this Act, shall to that extent be void: *Provided,* That in any action brought against any such common carrier under or by virtue of any of the provisions of this Act, such common carrier may set off therein any sum it has contributed or paid to any insurance relief benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action was brought.

(45 U.S.C. 55)

SEC. 6. That no action shall be maintained under this Act unless commenced within three years from the day the cause of action accrued.

Under this Act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The

jurisdiction of the courts of the United States under this act shall be concurrent with that of the courts of the several States.

(45 U.S.C. 56)

SEC. 7. That the term "common carrier" as used in this Act shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

(45 U.S.C. 57)

SEC. 8. That nothing in this Act shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other Act or Acts of Congress, or to affect the prosecution of any pending proceeding or right of action under the Act of Congress entitled "An Act relating to liability of common carriers in the District of Columbia and Territories, and to common carriers engaged in commerce between the States and between the States and foreign nations to their employees," approved June eleventh, nineteen hundred and six.

(45 U.S.C. 58)

SEC. 9. That any right of action given by this Act to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury.

(45 U.S.C. 59)

SEC. 10. Any contract, rule, regulation, or device whatsoever, the purpose, intent, or effect of which shall be to prevent employees of any common carrier from furnishing voluntarily information to a person in interest as to the facts incident to the injury or death of any employee, shall be void, and whoever, by threat, intimidation, order, rule, contract, regulation, or device whatsoever, shall attempt to prevent any person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily such information to a person in interest, shall, upon conviction thereof, be punished by a fine of not more than $1,000 or imprisoned for not more than one year, or by both such fine and imprisonment, for each offense: *Provided,* That nothing herein contained shall be construed to void any contract, rule, or regulation with respect to any information contained in the files of the carrier, or other privileged or confidential reports.

If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons and circumstances shall not be affected thereby.

(45 U.S.C. 60)

LABOR DISPUTE RESOLUTIONS

LABOR DISPUTE RESOLUTIONS

SENATE JOINT RESOLUTION 102

(Public Law 88–108; 77 Stat. 132)

JOINT RESOLUTION To provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees.

Whereas the labor dispute between the carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America, labor organizations, threatens essential transportation services of the Nation; and

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained; and

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not resulted in settlement of the dispute; and

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers; and

Whereas it is desirable to achieve the above objectives in a manner which preserves and prefers solutions reached through collective bargaining; and

Whereas, on August 2, 1963, the Secretary of Labor submitted to the carrier and organization representatives certain suggestions as a basis of negotiation for disposition of the fireman (helper) and crew consist issues in the dispute and thereupon through such negotiations tentative agreement was reached with respect to portions of such suggestions; and

Whereas, on August 16, 1963, the carrier parties to the dispute accepted and the organization parties to the dispute accepted with certain reservations the Secretary of Labor's suggestion that the fireman (helper) and crew consist issues be resolved by binding arbitration but the said parties have been unable to agree upon the terms and procedures of an arbitration agreement: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That no carrier which served the notices of November 2, 1959, and no labor organization which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by

agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored.

SEC. 2. There is hereby established an arbitration board to consist of seven members. The representatives of the carrier and organization parties to the aforesaid dispute are hereby directed, respectively, within five days after the enactment hereof each to name two persons to serve as members of such arbitration board. The four members thus chosen shall select three additional members. The seven members shall then elect a chairman. If the members chosen by the parties shall fail to name one or more of the additional three members within ten days, such additional members shall be named by the President. If either party fails to name a member or members to the arbitration board within the five days provided, the President shall name such member or members in lieu of such party and shall also name the additional three members necessary to constitute a board of seven members, all within ten days after the date of enactment of this joint resolution. Notwithstanding any other provision of law, the National Mediation Board is authorized and directed: (1) to compensate the arbitrators not named by the parties at a rate not in excess of $100 for each day together with necessary travel and subsistence expenses, and (2) to provide such services and facilities as may be necessary and appropriated in carrying out the purposes of this joint resolution.

SEC. 3. Promptly upon the completion of the naming of the arbitration board the Secretary of Labor shall furnish to the board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request setting forth the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth, as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as "Use of Firemen (Helpers) on Other Than Steam Power" and "Consist of Road and Yard Crews" and that portion of the organizations' notices of September 7, 1960, identified as "Minimum Safe Crew Consist" and implementing proposals pertaining thereto. The arbitration board shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement. Such award shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration.

SEC. 4. To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of

the Railway Labor Act, the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act. The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act. The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise.

SEC. 5. The arbitration board shall begin its hearings thirty days after the enactment of this joint resolution or on such earlier date as the parties to the dispute and the board may agree upon and shall make and file its award not later than ninety days after the enactment of this joint resolution: *Provided, however,* That said award shall not become effective until sixty days after the filing of the award.

SEC. 6. The parties to the disputes arising from the aforesaid notices shall immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration under section 3 of this joint resolution and shall exert every reasonable effort to resolve such issues by agreement. The Secretary of Labor and the National Mediation Board are hereby directed to give all reasonable assistance to the parties and to engage in mediatory action directed toward promoting such agreement.

SEC. 7. (a) In making any award under this joint resolution the arbitration board established under section 2 shall give due consideration to the effect of the proposed award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

(b) The obligations imposed by this joint resolution, upon suit by the Attorney General, shall be enforcible through such orders as may be necessary by any court of the United States having jurisdiction of any of the parties.

SEC. 8. This joint resolution shall expire one hundred and eighty days after the date of its enactment, except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence.

SEC. 9. If any provision of this joint resolution or the application thereof is held invalid, the remainder of this joint resolution and the application of such provision to other parties or in other circumstances not held invalid shall not be affected thereby.

Approved August 28, 1963.

SENATE JOINT RESOLUTION 65

(Public Law 90–10; 81 Stat. 12)

JOINT RESOLUTION To extend the period for making no change of conditions under section 10 of the Railway Labor Act applicable in the current dispute between the railroad Carriers represented by the National Railway Labor Conference and certain of their employees.

Whereas disputes exist between the carriers represented by the National Railway Labor Conference and certain of their employee represented by the International Associatioin of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; Sheet Metal Workers' International Association; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America; International Brotherhood of Firemen and Oilers functioning through the Railway Employees' Department, AFL-CIO, labor organizations; and

Whereas the President of the United States, pursuant to the provisions of section 10 of the Railway Labor Act, by Executive Order No. 11324 of January 28, 1967, created an Emergency Board to investigate these disputes and report its findings; and

Whereas the Emergeny Board has reported and the statutory period for making no change of conditions, as extended by agreement of the parties, is about to expire, without the parties having resolved the issues in dispute, thereby continuing to threaten substantially to interrupt. interstate commerce to a degree such as to deprive the country of essential transportation services; and

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained; and

Whereas the Congress finds that an emergency measure is essential to security and continuity of transportation services by such carriers; and

Whereas it is desirable to achieve the above objectives in a manner conducive to resolution of the disputes through collective bargaining: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the final paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall be extended for an additional period with respect to the disputes referred to the Executive Order No. 11324 of January 28, 1967, so that no change, except by agreement, shall be made by the carriers represented by the National Railway Labor Conference, or by their employees, in the conditions out of which such disputes arose prior to 12:01 a.m. of June 19, 1967.

Approved April 12, 1967.

HOUSE JOINT RESLOUTION 543

(Public Law 90–13; 81 Stat. 13)

JOINT RESOLUTION To further extend the period provided for under section 10 of the Railway labor Act applicable in the current dispute between the railroad carriers represented by the National Railway Labor Conference and certain of their employees.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 90–10 (Ninetieth Congress, S.J. Res. 65), April 12, 1967, is hereby amended by striking out "prior to 12:01 a.m. of May 3, 1967" and inserting "prior to 12:01 a.m., June 19, 1967".

Approved May 2, 1967.

SENATE JOINT RESOLUTION 81

(Public Law 90–54; 81 Stat. 122)

JOINT RESOLUTION To provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees.

Whereas the labor dispute between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; Sheet Metal Workers' International Association; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America; International Brotherhood of Firemen and Oilers functioning through the Railway Employees' Department, AFL-CIO, labor organizations, threatens essential transportation services of the Nation; and

Whereas Emergency Board Numbered 169 (created by Executive Order 11324, January 28, 1967, 32 F.R. 1075) has made its report; and

Whereas, under procedures for resolving such dispute provided for in the Railway Labor Act as extended and implemented by Public Law 90–10 of April 12, 1967, as amended, the parties have not succeeded completely in resolving all of their differences through the processes of free collective bargaining; and

Whereas related disputes have been settled by private collective bargaining between the carriers and other organizations representing approximately three-quarters of their employees, so that the present dispute represents a barrier to the completion of this round of bargaining in this industry; and

Whereas a Special Mediation Panel appointed by the President upon enactment of Public Law 90–10 proposed settlement terms to assist the parties in implementation of the collective bargaining envisaged in the recommendations of Emergency Board Numbered 169; and

Whereas it is desirable to provide procedures for the orderly culmination of this collective bargaining process; and

Whereas the national interest, including the national health and defense, requires that transportation services essential to interstate commerce be maintained; and

Whereas the Congress finds that an emergency measure is essential to security and continuity of transportation services by such carriers: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established a Special Board for the purpose of assisting the parties in the completion of their collective bargaining and the resolution of the remaining issues in dispute. The Special Board shall consist of five members to be named by the President. The National Mediation Board is authorized and directed (1) to compensate the members of the Board at a rate not in excess of $100 per each day together with necessary travel and subsistence expenses, and (2) to provide such services and facilities as may be necessary and appropriate in carrying out the purposes of this resolution. For the purpose of any hearing conducted by the Special Board, it shall have the authority conferred by the provisions of sections 9 and 10 (relating to the attendance and examination of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 26, 1914, as amended (15 U.S.C. 49, 50).

SEC. 2. The Special Board shall attempt by mediation to bring about a resolution of this dispute and thereby to complete the collective bargaining process.

SEC. 3. If agreement has not been reached within thirty days after the enactment of this resolution, the Special Board shall hold hearings on the proposal made by the Special Mediation Panel, in its report to the President of April 22, 1967, in implementation of the collective bargaining contemplated in the recommendation of Emergency Board Numbered 169, to determine whether the proposal (1) is in the public interest, (2) is a fair and equitable settlement within the limits of the collective bargaining and mediation efforts in this case, (3) protects the collective bargaining process, and (4) fulfills the purposes of the Railway Labor Act. At such hearings the parties shall be accorded a full opportunity to present their positions concerning the proposal of the Special Mediation Panel.

SEC. 4. The Special Board shall make its determination by vote of the majority of the members on or before the sixtieth day after the enactment of this resolution, and shall incorporate the proposal of the Special Mediation Panel with such modifications, if any, as the Board finds to be necessary to (1) be in the public interest, (2) achieve a fair and equitable settlement within the limits of the collective bargaining and mediation efforts in this case, (3) protect the collective bargaining process, and (4) fulfill the purposes of the Railway Labor Act. The determination shall be promptly transmitted by the Board to the President and to the Congress.

SEC. 5. (a) If agreement has not been reached by the parties upon the expiration of the period specified in section 6, the determination of the Special Board shall take effect and shall continue

in effect until the parties reach agreement or, if agreement is not reached, until such time, not to exceed two years from January 1, 1967, as the Board shall determine to be appropriate. The Board's determination shall have the same effect (including the preclusion of resort to either strike or lockout) as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.).

(b) In the event of disagreement as to the meaning of any part or all of a determination by the Special Board, or as to the terms of the detailed agreements or arrangements necessary to give effect thereto, any party may within the effective period of the determination apply to the Board for clarification of its determination, whereupon the Board shall reconvene ad shall promptly issue a further determination with respect to the matters raised by any application for clarification. Such further determination may, in the discretion of the Board be made with or without a further hearing.

(c) The United States District Court for the District of Columbia shall have exclusive jurisdiction of all suits concerning the determination of the Special Board.

SEC. 6. The provisions of the final paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160), as heretofore extended by law, shall be hereby reinstated and extended until 12:01 o'clock antemeridian of the ninety-first day after enactment of this resolution with respect to the dispute referred to in Executive Order 11324, January 28, 1967.

Approved July 17, 1967.

SENATE JOINT RESOLUTION 180

(Public Law 91–203; 84 Stat. 22)

JOINT RESOLUTION To provide for a temporary prohibition of strikes or lockouts with respect to the current railway labor-management dispute.

Whereas the labor dispute between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; Sheet Metal Workers' International Association; International Brotherhood of Electrical Workers functioning through the Employees' Conference Committee, labor organizations, threatens essential transportation services of the Nation; and

Whereas all the procedures for resolving such dispute under the Railway Labor Act have been exhausted; and

Whereas the representatives of all parties to this dispute reached tentative agreement on all outstanding issues and entered into a memorandum of understanding, dated December 4, 1969; and

Whereas the terms of the memorandum of understanding, dated December 4, 1969, were ratified by the overwhelming majority of all employees voting and by a majority of employees in three out of the four labor organizations party to the dispute; and

Whereas the failure of ratification has resulted in a threatened nation-wide cessation of essential rail transportation services; and
Whereas the national interest, including the national health and defense, requires that transportation services essential to interstate commerce is maintained; and
Whereas the Congress finds that an emergency measure is essential to security and continuity of transportation services: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the final paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply and be extended for an additional period with respect to the disputes referred to in Executive Order No. 11486 of October 3, 1969, so that no change, except by agreement, shall be made by the carriers represented by the National Railway Labor Conference, or by their employees, in the conditions out of which such disputes arose prior to 12:01 a.m. of April 11, 1970.

Approved March 4, 1970.

SENATE JOINT RESOLUTION 190

(Public Law 91–226; 84 Stat. 118)

JOINT RESOLUTION To provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees.

Whereas the labor dispute between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; Sheet Metal Workers' International Association; International Brotherhood of Electrical Workers functioning through the Employees' Conference Committee, labor organization, threatens essential transportation service of the Nation; and
Whereas all the procedures for resolving such dispute under the Railway Labor Act have been exhausted; and
Whereas the representatives of all parties to this dispute reached agreement on all outstanding issues and entered into a memorandum of understanding, dated December 4, 1969; and
Whereas the terms of the memorandum of understanding, dated December 4, 1969, were ratified by the overwhelming majority of all employees voting and by a majority of employees in three out of the four labor organizations party to the dispute; and
Whereas the failure of ratification resulted from the concern of a relatively small group of workers concerning the impact of one provision of the agreement; and
Whereas this failure of ratification has resulted in a threatened nation-wide cessation of essential rail transportation services; and
Whereas the memorandum of understanding, dated December 4, 1969, permits the service of notices or proposals for changes under the Railway Labor Act on September 1, 1970, to become effective on or after January 1, 1971; and

Whereas the national interest, including the national health and defense, requires that transportation services essential to interstate commerce is maintained; and

Whereas the Congress finds that an emergency measure is essential to security and continuity of transportation services: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the memorandum of understanding, dated December 4, 1969, shall have the same effect (including the preclusion of resort to either strike or lockout) as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.) and that February 19, 1970, shall be deemed the "dated of notification of ratification" as used in this memorandum of understanding.

Approved April 9, 1970.

HOUSE JOINT RESOLUTION 1413

(Public Law 91–541; 84 Stat. 1407)

JOINT RESOLUTION To provide for a temporary prohibition of strikes or lockouts with respect to the current railway labor-management dispute.

Whereas the labor dispute between the carriers represented by the National Railway Labor Conference and the Eastern, Western, and Southeastern Carriers Conference Committees and certain of their employees represented by the United Transportation Union, the Brotherhood of Railway Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC), the Brotherhood of Maintenance of Way Employees, Hotel and Restaurant Employees and Bartenders International Union threatens essential transportation services of the Nation; and

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained; and

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not resulted in settlement of the dispute; and

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers; and

Whereas it is desirable to achieve the objectives in a manner which preserves and prefers solutions reached through collective bargaining; andWhereas the recommendations of Presidential Emergency Board Numbered 178 for settlement of this dispute did not result in a settlement: Now, therefore, in order to encourage these parties to reach their own agreement, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the final paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply and be extended for an additional period with respect to the above dispute, so that no change, except by agreement, shall be made by the carriers represented by the Na-

tional Railway Labor Conference and the Easter, Western, and Southeastern Carriers Conference Committees or by their employees, in the conditions out of which such dispute arose prior to l2:01 antemeridian of March 1, 1971.

SEC. 2. Not later than fifteen days prior to the expiration date specified in the first section of this joint resolution the President shall submit to the Congress a full and comprehensive report containing—

(1) the progress, if any, of negotiations between the NationalRailway Labor conference and the Eastern, Western, and Southeastern Carriers Conference Committees and their employees; and

(2) any such recommendations for a proposed solution of the dispute described in this joint resolution as he deems appropriate.

SEC. 3. Notwithstanding the first section of this joint resolution, the rates of pay of all employees who are subject to the first section of this resolution shall be increased by 5 percent effective as of January 1, 1970, and by 32 cents per hour effective as of November 1, 1970. Nothing in this section shall prevent any change made by agreement in the increases in rates of pay provided pursuant to this section.

Approved December 10, 1970.

SENATE JOINT RESOLUTION 100

(Public Law 92–17; 85 Stat. 39)

JOINT RESOLUTION To provide for an extension of section 10 of the Railway Labor Act with reset to the current railway labor-management dispute, and for other purposes.

Whereas the labor dispute between the carriers represented by the National Railway Labor Conference and the Eastern, Western, and Southeastern Carriers Conference Committee and certain of their employees represented by the Brotherhood of Railway Signalmen threatens essential transportation services of the Nation; and

Whereas it is essential to the national interest, including the nations health and defense, that essential transportation services be maintained; and

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not resulted in settlement of the dispute, and

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers; and

Whereas it is desirable to achieve the objectives in a manner which preserves and prefers solutions reached through collective bargaining; and

Whereas the recommendations of Presidential Emergency Board Numbered 179 for settlement of this dispute did not result in a

settlement: Now, therefore, in order to encourage these parties to reach their own agreement, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the final paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply and be extended for an additional period with respect to the above dispute, so that no change, except by agreement, shall be made by the carriers represented by the National Railway Labor Conference Committee or by their employees, in the conditions out of which such dispute arose prior to 12:01 antemeridian of October 1, 1971.

SEC. 2. Not later than ten days prior to the expiration date specified in the first section of this joint resolution the Secretary of Labor shall submit to the Congress a full and comprehensive report containing—

(1) the progress, if any, of negotiations between the National Railway Labor Conference and the Eastern, Western, and Southeastern Carriers Conference Committees and their employees; and

(2) any such recommendations for a proposed solution of the dispute described in this joint resolution as he deems appropriate.

SEC. 3. Not later than July 31, 1971, the Secretary of Labor and the Secretary of Transportation shall submit jointly to the Congress as full and comprehensive a report as feasible on the impact of the current work stoppage. Such report shall include an analysis of all the recoverable and nonrecoverable losses suffered as a result of the stoppage; the extent to which rail traffic was diverted to other means of transportation, and the secondary effects on other industries and employment. Not later than July 31, 1971, the Secretary of Defense shall submit to the Congress as full and comprehensive a report as feasible on the impact of the current stoppage on movement of goods vital to the national defense; the extent to which rail traffic was diverted to other means of transportation and the status of plans to provide for the movement of defense articles in the event of a railroad work stoppage or lockout.

SEC. 4. Notwithstanding the first section of this joint resolution, the rates of pay of all employees who are subject to the first section of this joint resolution shall be increased in accordance with the following table:

Effective as of:	Pay increase
January 1, 1970	5 per centum for all employees.
November 1, 1970	30 cents per hour for leaders and mechanics.
November 1, 1970	18 cents per hour for assistants and helpers.

Nothing in this section shall prevent any change made by agreement in the increases in rates of pay provided pursuant to this section.

SEC. 5. It is the sense of the Congress that the living accommodations of some of the employees who are subject to the first section of this joint resolution, while they are on travel status, are unsatisfactory. Accordingly, the Congress does not intend, by limiting the effect of section 4 to rates of pay, to endorse the continued fur-

nishing of substandard quarters to employees and urges management and labor to negotiate an agreement to provide, as soon as possible, substantially improved living quarters for employees on travel status.

SEC. 6. This resolution shall take effect immediately upon enactment.

Approved May 18, 1971.

SENATE JOINT RESOLUTION 59

(Public Law 93–5; 87 Stat. 5)

JOINT RESOLUTION To extend the provisions of the Railway Labor Act and for other purposes.

Whereas a labor dispute exists between the Penn Central Transportation Company and certain of its employees represented by the United Transportation Union, arising out of the Penn Central Transportation Company's implementation of a plan to eliminate approximately five thousand seven hundred train crew positions; and

Whereas the recommendations of Presidential Emergency Board Number 180 did not result in a settlement of this dispute, and all procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted; and

Whereas such dispute has now resulted in a cessation of the Penn Central Transportation Company's rail carrier operations; and

Whereas such cessation of operations by the Penn Central Transportation Company, a rail carrier which transports two hundred and twenty five thousand passengers a day and 20 per centum of the Nation's freight, and which provides many necessary connections with numerous other rail carriers operating throughout the Nation, threatens essential transportation services vital to the national health and safety; and

Whereas the Penn Central Transportation Company is now undergoing reorganization proceedings under section 77 of the Federal Bankruptcy Act, and its court-appointed trustees have indicated that present reorganization proceedings will not be successful, even with the eventual elimination of five thousand seven hundred train crew positions, alone, and that a massive infusion of Federal financial assistance would be needed; and

Whereas the financial crisis of the Penn Central Transportation Company is so acute that cessation of its operations for even a short period of time, may make it financially impossible to resume operations; and

Whereas failure of the Penn Central Transportation Company to resume operations, in addition to the previously stated impact on vital transportation services throughout the Nation, will further threaten the continued operation of other financially-imperiled rail carriers in the Northeast section of the Nation; and

Whereas the President has not provided the Congress with any proposals for preserving essential rail services in the Northeast section of the Nation, including those services which would be

jeopardized by financial collapse of the Penn Central Company; and

Whereas the Congress finds that emergency measures are necessary to assure the continuity of essential rail transportation services: Now, therefore, in order to encourage the parties to the dispute to reach their own agreement, and to provide time for the submission to Congress of a comprehensive plan for preserving essential rail services in the Northeast section of the Nation, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the final paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply and be extended for an additional period commencing at the expiration of the thirty-day period provided for in the third paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) and ending at 12:01 antemeridian May 9, 1973, so that during such period no change except by agreement shall be made by the Penn Central Transportation Company or its employees or by order of any court in the conditions out of which such dispute arose.

SEC. 2. Not later than forty-five days from the enactment of this joint resolution the Secretary of Transportation shall submit to the Congress a report which, regardless of the settlement of the particular dispute between the Penn Central Transportation Company and its employees represented by the United Transportation Union, provides a full and comprehensive plan for the preservation of essential rail transportation services in the Northeast section of the Nation, including the President's proposals, if any, regarding Federal financial expenditures necessary for restoration or preservation of rail transportation services imperiled by the financial failure of rail carriers, and for alternative means for providing essential transportation services now provided by such carriers.

SEC. 3. Not later than thirty days prior to the expiration date specified in the first section of this joint resolution, the Secretary of Labor shall submit to the Congress a full and comprehensive report containing—

(1) the progress, if any, of negotiations between the Penn Central Transportation Company and its employees represented by the United Transportation Union; and

(2) any such recommendations for a proposed solution of the dispute described in this joint resolution as he deems appropriate.

Approved February 9, 1973.

SENATE JOINT RESOLUTION 250

(Public Law 97–262; 96 Stat. 1130)

JOINT RESOLUTION To provide for resolution of the single outstanding issue in the current railway labor-management dispute, and for other purposes.

Whereas the labor dispute between the carriers represented by the National Carriers' Conference Committee of the National Rail-

way Labor Conference and certain of their employees represented by the Brotherhood of Locomotive Engineers threatens essential transportation services of the Nation;

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained;

Whereas all of the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and the parties have resorted to self help;

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers;

Whereas all of the other negotiations for a national agreement by the rail carriers and the representatives of other railroad employees have been successfully completed, including the negotiations of the carriers and the United Transportation Union that were resolved through the Report and Recommendations of Presidential Emergency Board Numbered 195; and

Whereas the Recommendations of Presidential Emergency Borad Numbered 194 for settlement of this dispute have led to agreement of the parties on all but a single issue, and the recommendation on that issue would preserve the employees' collective bargaining rights within the peaceful procedures of the Railway Labor Act: Now, therefore, in order to preserve the national interest in essential transportation services, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, consistent with the purposes of the Railway Labor Act to avoid any labor dispute that threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service—

(1) the parties to the dispute between the carriers represented by the National Carriers' Conference Committee of National Railway Labor Conference and certain of their employees represented by the Brotherhood of Locommotive Engineers shall take all necessary steps to restore service, and the status quo of the parties shall return to that which was in effect prior to 12:01 antemeridian of September 19, 1982, which status shall remain in effect through June 30, 1984, and which status shall be subject to the provisions of paragraph (2) of this joint resolution; and

(2) the Report and Recommendations of the Presidential Emergency Board Numbered 194, dated August 19, 1982 (including the recommendations regarding moratorium issues), shall be binding on the parties and shall have the same effect as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.), and shall be effective for the period from April 1, 1981, through June 30, 1984: Provided, That nothing in this joint resolution shall prevent any mutual agreement by the parties to implement the terms and conditions established by this joint resolution.

SEC. 2. This resolution shall take effect immediately upon enactment.

Approved September 22, 1982.

HOUSE JOINT RESOLUTION 683

(Public Law 99–385; 100 Stat. 819)

JOINT RESOLUTION To provide for a temporary prohibition of strikes or lockouts with respect to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

Whereas the labor dispute between the common rail carriers, Maine Central Railroad Company and Portland Terminal Company, and certain of the employees of such carriers represented by the Brotherhood of Maintenance of Way Employees threatens essential transportation services of the Nation;

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained;

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers;

Whereas it is desirable to resolve such dispute in a manner which encourages solutions reached through collective bargaining;

Whereas the President, pursuant to section 10 of the Railway Labor Act (45 U.S.C. 160), by Executive Order No. 12557 of May 16, 1986, created a Presidential Emergency Board to investigate the dispute and report findings;

Whereas the recommendations of Presidential Emergency Board No. 209 for settlement of such dispute have not yet resulted in a settlement; and

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not resulted in settlement of the dispute: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the final paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply and be extended for an additional period of 60 days beginning on July 21, 1986, with respect to the dispute referred to in Executive Order No. 12557 of May 16, 1986, so that no change, except by agreement, shall be made by the common rail carriers, Maine Central Railroad Company and Portland Terminal Company, or by the employees of such carriers in the conditions out of which such dispute arose as such conditions existed before 12:01 ante meridiem of March 3, 1986.

SEC. 2. (a) Not later than 10 days prior to the expiration date of the 60-day period referred to in the first section of this joint resolution the board established under subsection (b) shall submit to the Congress a full and comprehensive report containing—

(1) the progress, if any, of negotiations between the common rail carriers, Maine Central Railroad Company and Portland Terminal Company, and the employees of such carriers

represented by the Brotherhood of Maintenance of Way Employees;

(2) findings of fact regarding financial and other circumstances related to the dispute described in this resolution, including, but not limited to, developments since March 3, 1986; and

(3) recommendations for a proposed solution of the dispute described in this resolution, including, but not limited to, the issues covered by Presidential Emergency Board Number 209.

(b) The National Mediation Board shall appoint a three-member boardfor the purpose of preparing and submitting the report described in subsection (a). No member appointed to such board shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of such members shall be fixed by the National Mediation Board. The second paragraph of section 10 of the Railway Labor Act shall apply to the expenses of the board established under this subsection as if such board were a board created under such section 10.

(c) The board appointed under subsection (b) shall terminate upon the submission to the Congress of the report required under subsection (a).

Approved August 21, 1986.

SENATE JOINT RESOLUTION 415

(Public Law 99–431; 100 Stat. 987)

JOINT RESOLUTION To provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

Whereas the labor dispute between the common rail carriers, Maine Central Railroad Company and Portland Terminal Company, and certain of the employees of such carriers represented by the Brotherhood of Maintenance of Way Employees threatens essential transportation services of the Nation;

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained;

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers;

Whereas the President by Executive Order Numbered 12557 of May 16, 1986, pursuant to the provisions of section 10 of the Railway Labor Act (45 U.S.C. 160), created a Presidential Emergency Board to investigate the dispute and report findings;

Whereas the recommendations of Presidential Emergency Board Numbered 209 for settlement of such dispute have not yet resulted in a settlement;

Whereas the extension of the provisions of section 10 of the Railway Labor Act (45 U.S.C. 160) for an additional 60-day period to such dispute provided by the joint resolution entitled: "Joint resolution to provide for a temporary prohibition of strikes or lockouts with respect to the Maine Central Railroad Company

and the Portland Terminal Company labor-management dispute", approved August 21, 1986 (Public Law 99-385), has not yet resulted in a settlement of such dispute;

Whereas the advisory board established pursuant to section 2 of such joint resolution recommended that in the event that the parties to the dispute were unable to reach agreement on the dispute before September 13, 1986, the Congress should enact legislation directing the parties to accept and apply the recommendations of Emergency Board Numbered 209, and if such parties are unable to agree as to all necessary details in applying the recommendations of such Emergency Board, all such unsettled issues should be submitted to final and binding arbitration; Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not yet resulted in settlement of the dispute;

Whereas the Congress, under the Commerce Clause of the Constitution, has the authority and responsibility to ensure the uninterrupted operation of essential transportation services; and Whereas the Congress in the past has enacted legislation for such purposes: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following conditions shall apply to the dispute referred to in Executive Order Numbered 12557 of May 16, 1986, between the common rail carriers, Maine Central Railroad Company and Portland Terminal Company (hereafter in this resolution referred to as the "carriers") and the employees of such carriers represented by the Brotherhood of Maintenance of Way Employees.

(1) The parties to such dispute shall take all necessary steps to restore or preserve the conditions out of which such dispute arose as such conditions existed before 12:01 ante meridiem of March 3, 1986, except as provided in paragraphs (2) through (4).

(2) The report and recommendations of Presidential Emergency Board Numbered 209 shall be binding on the parties and shall have the same effect as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.), except that nothing in this joint resolution shall prevent a mutual written agreement by the parties to any terms and conditions different from those established by this joint resolution.

(3)(A) If there are unresolved implementing issues remaining with respect to the report and recommendations or agreement under paragraph (2) after ten days after the date of the enactment of this joint resolution, the parties to the dispute shall enter into binding arbitration to provide for a resolution of such issues.

(B) The National Mediation Board established by section 4 of the Railway Labor Act (45 U.S.C. 154) shall appoint an arbitrator to resolve the issues described in subparagraph (A). Except as provided in this joint resolution, such arbitration shall be conducted as if it were under section 7 of such Act, and any award of such arbitration shall be enforceable as if under section 9 of such Act.

(4) Within thirty days after the date of the enactment of this joint resolution, the binding arbitration entered into pursuant to paragraph (3) shall be completed.

Approved September 30, 1986.

HOUSE JOINT RESOLUTION 93

(Public Law 100–2; 101 Stat. 4)

JOINT RESOLUTION To provide for a temporary prohibition of strikes or lockouts with respect to the Long Island Rail Road labor-management dispute.

Whereas the labor dispute between the rail carrier, Long Island Rail Road, and certain of the employees of such carrier represented by several labor organizations threatens essential transportation services of the Nation;

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained;

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carrier;

Whereas it is desirable to resolve such dispute in a manner which encourages solutions reached through collective bargaining;

Whereas the parties were unable to resolve the dispute according to the recommendations of Presidential Emergency Board No. 210, issued June 25, 1986;

Whereas the President, pursuant to the Railway Labor Act, by Executive Order No. 12563 of September 12, 1986, created Presidential Emergency Board No. 212 to investigate the dispute and report findings;

Whereas the recommendations of Presidential Emergency Board No. 212 for settlement of such dispute have not yet resulted in a settlement; and

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not resulted in settlement of the dispute: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9A(h) of the Railway Labor Act (45 U.S.C. 159a(h)) shall apply and be extended for an additional period of 60 days beginning on January 17, 1987, with respect to the dispute referred to in Executive Order No. 12563 of September 12, 1986, so that no change, except by agreement, shall be made by the rail carrier, Long Island Rail Road, or by the employees of such carrier represented by labor organizations which are party to such dispute, in the conditions out of which such dispute arose as such conditions existed before 12:01 ante meridiem of January 17, 1987.

SEC. 2. (a) Not later than 10 days before the expiration of the 60-day period referred to in the first section of this joint resolution, the board established under subsection (b) shall submit to the Congress a full and comprehensive report containing—

(1) the progress, if any, of negotiations between the rail carrier, Long Island Rail Road, and the employees of such carrier represented by labor organizations which are party to such dispute;

(2) findings of fact regarding circumstances related to the dispute described in this joint resolution; and

(3) recommendations for a proposed solution of the dispute described in this joint resolution, including, but not limited to, the issues covered by Presidential Emergency Board No. 212.

(b) The National Mediation Board shall appoint a three-member board for the purpose of preparing and submitting the report described in subsection (a). No member appointed to such board shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of such members shall be fixed by the National Mediation Board. The second paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply to the expenses of the board established under this subsection as if such board were a board created under such section 10.

(c) The board appointed under subsection (b) shall terminate upon the submission to the Congress of the report required under subsection (a).

Approved January 28, 1987.

SENATE JOINT RESOLUTION 356

(Public Law 100–380; 102 Stat. 896)

JOINT RESOLUTION To provide for the extension of a temporary prohibition of strikes or lockout with respect to the Chicago and Northwestern Transportation Company labor-management dispute.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF TEMPORARY PROHIBITION.

Section 10 of the Railway Labor Act (45 U.S.C. 160) shall be extended until September 9, 1988, with respect to the dispute referred to in Executive Order No. 12636 of April 20, 1988, so that no change, except by agreement, shall be made by the rail carrier, Chicago and Northwestern Transportation Company, or by the employees of such carrier represented by labor organizations that are a party to such dispute, in the conditions out of which the dispute arose as such conditions existed before 12:01 ante meridiem of August 4, 1988.

Approved August 4, 1988.

SENATE JOINT RESOLUTION 374

(Public Law 100–429; 102 Stat. 1617)

JOINT RESOLUTION To provide for a settlement of the labor-management dispute between the Chicago and North Western Transportation Company and the United Transportation Union.

Whereas the labor dispute between the Chicago and North Western Transportation Company, a common carrier by rail in interstate commerce, and certain of its employees represented by the

United Transportation Union threatens to interrupt essential transportation services of the United States;

Whereas it is essential to the national interest, particularly in health and defense, that essential transportation services be maintained;

Whereas Congress finds that emergency measures are essential to maintaining the security and continuity of transportation services provided by the Chicago and North Western Transportation Company;

Whereas the President, by Executive Order 12636 of April 20, 1988, and pursuant to the provisions of section 10 of the Railway Labor Act (45 U.S.C. 160), created Presidential Emergency Board 213 to investigate the dispute and report findings;

Whereas the recommendations of the Emergency Board 213 issued on July 1, 1988, have not resulted in a settlement of the dispute;

Whereas all the procedures provided under the Railway Labor Act for resolving the dispute have been exhausted and have not resulted in settlement of the dispute;

Whereas Congress, under the Commerce Clause of the Constitution, has the authority and responsibility to ensure the uninterrupted operation of essential transportation services; and

Whereas Congress has in the past enacted legislation for such purposes: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONDITIONS FOR RESOLVING DISPUTE.

The following conditions shall apply to the dispute referred to in Executive Order 12636 of April 20, 1988, between Chicago and North Western Transportation Company, a common carrier by rail in interstate commerce, and certain of its employees represented by the United Transportation Union:

(1) The parties to such dispute shall take all necessary steps to restore or preserve the conditions out of which such dispute arose as such conditions existed before 12:01 a.m. on August 4, 1988, except as provided in paragraphs (2) and (3).

(2) The report and recommendations of the Emergency Board 213 shall be binding on the parties upon the enactment of this joint resolution and shall have the same effect as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.), except that nothing in this joint resolution shall prevent a mutual written agreement to any terms and conditions different from those established by this joint resolution.

SEC. 2. ARBITRATION.

(a) UNRESOLVED ISSUES.—If there are any unresolved issues as to the initial implementation of the report and recommendations or agreement under section 1(a)(2) after 10 days after the date of the enactment of this joint resolution, on request of either party the parties to the dispute shall enter into binding arbitration to provide for a resolution of such issues.

(b) APPOINTMENT OF ARBITRATION BOARD.—The National Mediation Board established by section 4 of the Railway Labor Act (45 U.S.C. 154), shall appoint an arbitration board composed of three

neutral members experienced in the resolution of railroad disputes to resolve the issues described in subsection (a).

(c) CONDUCT OF ARBITRATION BOARD.—Except as provided in this joint resolution, the arbitration required under this section shall be conducted in accordance with section 7 of the Railway Labor Act (45 U.S.C. 157).

(d) ENFORCEMENT AND REVIEW OF ARBITRATION AWARD.—The arbitration award shall be enforceable and reviewable as if it were under section 9 of the Railway Labor Act (45 U.S.C. 159).

(e) JURISDICTION FOR JUDICIAL REVIEW OF ARBITRATION AWARD.—The United States District Court for the Northern District of Illinois, Eastern Division, is designated as the court in which the award is to be filed and reviewed.

SEC. 3. TIME LIMIT FOR ARBITRATION.

Not later than 30 days after the date of the enactment of this joint resolution, the binding arbitration entered into pursuant to subsection (a) shall be completed.

Approved September 9, 1988.

HOUSE JOINT RESOLUTION 222

(Public Law 102–29; 105 Stat. 169)

JOINT RESOLUTION To provide for a settlement of the railroad labor-management disputes between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and certain of their employees.

Whereas the labor disputes between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and certain of their employees represented by certain labor organizations threaten essential transportation services of the United States;

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained;

Whereas the President, pursuant to the provisions of section 10 of the Railway Labor Act (45 U.S.C. 160), by Executive Order No. 12714 of May 3, 1990, created Presidential Emergency Board No. 219 to investigate the disputes and report findings;

Whereas the recommendations of Presidential Emergency Board No. 219 issued on January 15, 1991, have formed the basis for tentative agreements between some, but not all, of the parties to the disputes;

Whereas the recommendations of Presidential Emergency Board No. 219 issued on January 15, 1991, have not resulted in a settlement of all the disputes;

Whereas all the procedures provided under the Railway Labor Act, and further procedures agreed to by the parties, have been exhausted and have not resulted in settlement of all the disputes;

Whereas it is desirable to resolve such disputes in a manner which encourages solutions reached through collective bargaining;

Whereas Congress, under the Commerce Clause of the Constitution, has the authority and responsibility to ensure the uninterrupted operation of essential transportation services;
Whereas the Congress finds that emergency measures are essential to national security and continuity of transportation services by such railroads; and
Whereas Congress has in the past enacted legislation for such purposes: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONDITIONS DURING RESOLUTION OF DISPUTES.

The following conditions shall apply to the disputes referred to in Executive Order No. 12714 of May 3, 1990, between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and the employees of such railroads represented by the labor organizations which are party to such disputes:

(1) The parties to such disputes shall take all necessary steps to restore or preserve the conditions out of which such disputes arose as such conditions existed before 12:01 a.m. on April 17, 1991, except as otherwise provided in this joint resolution.

(2) The final paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply and be extended for an additional period with respect to the disputes referred to in Executive Order No. 12714 of May 3, 1990, so that no change shall be made before the expiration of the period described in section 3(e) of this joint resolution by such parties, in the conditions out of which such dispute arose as such conditions existed before 12:01 a.m. on April 17, 1991.

(3) Except as provided in sections 3 and 4 of this joint resolution, the report and recommendations of Presidential Emergency Board No. 219 shall be binding on the parties upon the expiration of the period described in section 3(e) of this joint resolution, and shall have the same effect as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.).

SEC. 2. APPOINTMENT OF SPECIAL BOARD.

The President shall promptly appoint a 3-member Special Board. One member of the Special Board shall be an individual who was a member of Presidential Emergency Board No. 219. The remaining 2 members shall be appointed by the President from a list of arbitrators compiled by the National Mediation Board. No member appointed to such Special Board shall be pecuniarily or otherwise interested in any organization of employees or any railroad. The compensation of the members of the Special Board shall be fixed by the National Mediation Board. The second paragraph of section 10 of the Railway Labor Act shall apply to the expenses of the Special Board appointed under this subsection as if such Special Board were a board created under such section 10.

SEC. 3. RESOLUTION OF ISSUES IN DISAGREEMENT.

(a) REQUESTS FOR CLARIFICATION OR INTERPRETATION OF AMBIGUITIES.—Within 5 days after the Special Board is appointed under section 2, any party to the disputes referred to in Executive Order No. 12714 of May 3, 1990, may request the Special Board to clarify or interpret any ambiguities in the recommendations of Presidential Emergency Board No. 219.

(b) CLARIFICATION AND INTERPRETATION REPORT.—Within 15 days after the Special Board is appointed under section 2, the Special Board shall issue a report addressing requests made under subsection (a).

(c) REQUESTS FOR MODIFICATION.—Within 10 days after the Special Board issues its report under subsection (b), any party to the disputes referred to in Executive Order No. 12714 of May 3, 1990, may request the Special Board to modify any specific recommendation of Presidential Emergency Board No. 219 with respect to any issue on which the parties remain in disagreement. Issues on which Presidential Emergency Board No. 219 made no specific recommendation shall not be subject to consideration by the Special Board.

(d) PROCEDURE AND DETERMINATION.—The Special Board shall conduct such proceedings as it considers necessary to review requests made under subsection (c). In making a determination under this subsection, the Special Board shall accord a presumption of validity to the recommendations of Presidential Emergency Board No. 219. The party requesting a modification of a particular Presidential Emergency Board recommendation shall bear the burden of persuasion with respect to the modification of such recommendation. In order to overcome such presumption of validity, the party requesting a modification must show that the Presidential Emergency Board recommendation is demonstrably inequitable or was based on a material error or material misunderstanding. No later than 30 days after the 10-day period described in subsection (c), the Special Board shall complete its review and issue a final determination on all requests made under subsection (c), modifying in whole or in part the recommendation of Presidential Emergency Board No. 219 as to which the request was made, or denying such request.

(e) EFFECT OF DETERMINATION.—Upon the expiration of 10 days after the issuance of the determination of the Special Board under subsection (d), such determination shall be binding on the parties and shall have the same effect as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.).

(f) CLARIFICATION OF DETERMINATION.—In the event of disagreement as to the meaning of any part or all of the determination by the Special Board under subsection (d), or as to the terms of the detailed agreements or arrangements necessary to give effect thereto, any party may, by December 31, 1991, apply to the Special Board for clarification of its determination, whereupon the Special Board shall reconvene and shall promptly issue a further determination with respect to the matters raised by any application for clarification. Such further determination may, in the discretion of the Special Board, be made with or without a further hearing.

(g) PRECLUSION OF JUDICIAL REVIEW.—There shall be no judicial review of any report or determination of the Special Board under this section.

SEC. 4. MUTUAL AGREEMENTS PRESERVED.

Nothing in this joint resolution shall prevent a mutual written agreement to any terms and conditions different from those established by this joint resolution.

Approved April 18, 1991.

HOUSE JOINT RESOLUTION 517

(Public Law 102–306; 106 Stat. 260)

JOINT RESOLUTION To provide for a settlement of the railroad labor-management disputes between certain railroads and certain of their employees.

Whereas the unresolved labor disputes between certain railroads and certain of their employees represented by certain labor organizations threaten essential transportation services of the United States;

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained;

Whereas the President, pursuant to the provisions of section 10 of the Railway Labor Act (45 U.S.C. 160), by Executive Orders No. 12794, 12795, and 12796 of March 31, 1992, created Presidential Emergency Boards No. 220, 221, and 222 to investigate the disputes referenced therein and report findings;

Whereas the recommendations of Presidential Emergency Boards No. 220, 221, and 222 issued on May 28, 1992, have not resulted in a settlement of all the disputes referenced therein;

Whereas all the procedures provided under the Railway Labor Act, and further procedures agreed to by the parties, have been exhausted and have not resulted in settlement of all the disputes;

Whereas it is desirable to resolve such disputes in a manner which encourages solutions reached through collective bargaining;

Whereas Congress, under the Commerce Clause of the Constitution, has the authority and responsibility to ensure the uninterrupted operation of essential transportation services;

Whereas Congress finds that emergency measures are essential to security and continuity of transportation services by such railroads; and

Whereas Congress has in the past enacted legislation for such purposes: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONDITIONS DURING RESOLUTION OF DISPUTES.

The following conditions shall apply to all carriers and all employees affected by the disputes referred to in Executive Orders No. 12794, 12795, and 12796 of March 31, 1992, that remain unresolved between certain railroads and the employees of such rail-

roads represented by the labor organizations which are party to such disputes:

(1) All carriers and all employees affected by such unresolved disputes shall take all necessary steps to restore or preserve the conditions that existed before 12:01 a.m. on June 24, 1992, applicable to all such carriers and employees, except as otherwise provided in this joint resolution.

(2) The final paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply and be extended for an additional period with respect to each unresolved dispute referred to in Executive Orders No. 12794, 12795, and 12796 of March 31, 1992, so that no change shall be made by any carrier or employee affected by such unresolved dispute, before a decision is rendered under section 3(d) or the parties have reached agreement, in the conditions out of which such dispute arose as such conditions existed before 12:01 a.m. on June 24, 1992.

SEC. 2. APPOINTMENT OF ARBITRATORS.

(a) IN GENERAL.—(1) Within three days (excluding Saturdays, Sundays, and Federal holidays) after the date of enactment of this joint resolution, the carrier parties to the unresolved disputes described in Executive Order No. 12794 (acting jointly) and the labor organization party to such unresolved disputes shall each select an individual from the entire roster of arbitrators maintained by the National Mediation Board. Within six days (excluding Saturdays, Sundays, and Federal holidays) after the date of enactment of this joint resolution, the individuals selected under the preceding sentence shall jointly select an individual from such roster to serve as arbitrator for such unresolved disputes.

(2) Within three days (excluding Saturdays, Sundays, and Federal holidays) after the date of enactment of this joint resolution, the carrier party to the unresolved dispute described in Executive Order No. 12795 and the labor organization party to such unresolved dispute shall each select an individual from the entire roster of arbitrators maintained by the National Mediation Board. Within six days (excluding Saturdays, Sundays, and Federal holidays) after the date of enactment of this joint resolution, the individuals selected under the preceding sentence shall jointly select an individual from such roster to serve as arbitrator for such unresolved dispute.

(3) Within three days (excluding Saturdays, Sundays, and Federal holidays) after the date of enactment of this joint resolution, the carrier party to the unresolved disputes described in Executive Order No. 12796 and each of the labor organization parties to such unresolved disputes shall select an individual from the entire roster of arbitrators maintained by the National Mediation Board. Within six days (excluding Saturdays, Sundays, and Federal holidays) after the date of enactment of this joint resolution, the individual selected by each of the labor organizations under the preceding sentence shall, jointly with the individual selected by the carrier under the preceding sentence, select an individual from such roster to serve as arbitrator for the unresolved disputes involving such labor organization and the carrier.

(4) For purposes of this subsection and section 1, a dispute as to which tentative agreement has been reached but not ratified shall be considered an unresolved dispute.

(b) QUALIFICATIONS.—No individual shall be selected under subsection (a) who is pecuniarily or otherwise interested in any organization of employees or any railroad, or who has served as a member of Presidential Emergency Board No. 219, 220, 221, or 222. Nothing in this joint resolution shall preclude an individual from serving as arbitrator for more than one dispute described in subsection (a).

(c) COMPENSATION AND EXPENSES.—The compensation of individuals selected under subsection (a) shall be fixed by the National Mediation Board. The second paragraph of section 10 of the Railway Labor Act shall apply to the expenses of such individuals as if such individuals were members of a board created under such section 10.

SEC. 3. CONDUCT OF NEGOTIATIONS.

(a) INITIAL PERIOD.—During the 20-day period beginning on the date of enactment of this joint resolution, the parties to the unresolved disputes described in section 2(a) shall conduct negotiations for the purpose of reaching agreement with respect to such disputes. Arbitrators selected under section 2 shall be available for consultation with the parties to the unresolved disputes for which they have been selected.

(b) SUBMISSION OF FINAL OFFERS.—If, within the period described in subsection (a), the parties to any dispute described in section 2(a) do not reach agreement, both the labor organization and the carrier (or carriers) shall, within five days after the end of such period, submit to the arbitrator and to the other party (or parties) a proposed written contract embodying its last best offer for agreement concerning rates of pay, rules, and working conditions. Such proposed written contract shall address only—

(1) issues that the relevant Presidential Emergency Board dealt with by a recommendation in its report issued on May 28, 1992; or

(2) other issues that the parties agree may be addressed by the written contract.

(c) FINAL NEGOTIATIONS.—Upon submission to the arbitrator of the proposed written contracts described in subsection (b) and for a period of seven days thereafter, the parties shall, with the assistance of the arbitrator, attempt to reach agreement.

(d) ARBITRATOR'S DECISION.—If the parties fail to reach agreement within the period described in subsection (c), the arbitrator, within three days thereafter, shall render a decision selecting one of the proposed written contracts submitted under subsection (b), without modification and shall immediately submit such decision and selected contract to the President. The selected contract shall be binding on the parties and have the same effect as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.) unless, within three days following receipt of the decision and selected contract, the President disapproves such decision and contract. If the President disapproves such decision and contract, the parties shall have those rights under the

Railway Labor Act (45 U.S.C. 151 et seq.) they had at 12:01 a.m. on June 24, 1992.

(e) SPECIAL RULES.—(1) With respect to any tentative agreement reached but not ratified prior to the date of enactment of this joint resolution, if the ratification of such tentative agreement fails, the parties to such tentative agreement shall be considered parties to an unresolved dispute for purposes of this section, and the time periods described in this section shall apply to such dispute beginning on the date of such failure.

(2) With respect to any tentative agreement reached after the date of enactment of this joint resolution, if the ratification of such tentative agreement fails, both the labor organization and the carrier (or carriers) party to such tentative agreement shall, within five days after the date of such failure, submit to the arbitrator and to the other party (or parties) a proposed written contract under subsection (b), and shall be subject to subsections (c) and (d).

(3) Upon the agreement of the parties to an unresolved dispute, final offers may be submitted under subsection (b) at any time after the date of enactment of this joint resolution.

(f) TERMINATION.—The responsibilities of an arbitrator appointed under section 2 shall terminate upon a decision under subsection (d).

SEC. 4. PRECLUSION OF JUDICIAL REVIEW.

There shall be no judicial review of any decision of an arbitrator under this joint resolution.

SEC. 5. MUTUAL AGREEMENT PRESERVED.

Nothing in this joint resolution shall prevent a mutual written agreement to any terms and conditions different from those established by the joint resolution.

Approved June 26, 1992.

HOUSE JOINT RESOLUTION 417

(Public Law 103–380; 108 Stat. 3512)

JOINT RESOLUTION Providing for temporary extension of the application of the final paragraph of section 10 of the Railway Labor Act with respect to the dispute between the Soo Line Railroad Company and certain of its employees.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF TEMPORARY PROHIBITION.

The final paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply and be extended through February 28, 1995, with respect to the dispute referred to in Executive Order No. 12925 of August 29, 1994. During this extension period no change, except by agreement, shall be made by the rail carrier, the Soo Line Railroad Company, or by the employees of such carrier represented by the United Transportation Union, in the conditions out of which the dispute arose as such conditions existed before July 14, 1994.

Approved October 19, 1994.